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IN THE
SUPREME COURT OF THE UNITED STATES

ROBERT L. SCHULZ

Petitioner,

DIANE LUKARIS, KEITH GILLIGAN, JUDITH PORCARO

Plaintiffs-Appellants,

- against -

WASHINGTON COUNTY BOARD OF SUPERVISORS, et al.,

Respondents.

OPINIONS BELOW

The ORDER of the United States Court of Appeals for the Second Circuit, denying petition for panel rehearing and petition for rehearing en banc, filed January 19, 2006. Not reported.

The SUMMARY ORDER of the United States Court of Appeals for the Second Circuit affirming the judgment of the District Court, filed August 15, 2005. Not reported.

The MEMORANDUM DECISION AND ORDER of the United Stated District Court for the Northern District of New York denying motion for reconsideration, filed December 16, 2004. Not reported.

The MEMORANDUM DECISION AND ORDER of the United Stated District Court for the Northern District of New York, dismissing the action in its entirety, filed December 14, 2004. Reported at 349 F. Supp. 2d 375.

JURISDICTION

The Order sought to be reviewed was filed August 15, 2005.
The Order denying rehearing was filed on January 19, 2006.
This Court has jurisdiction under 28 U.S.C. Section 1257.

FEDERAL CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Petition Clause of the First Amendment to the United States Constitution reads in relevant part: **"Congress shall make no law…abridging…the right of the people…to petition the Government for a redress of grievances."**

2. The Fifth Amendment to the United States Constitution reads in relevant part: **"No person shall be…deprived of…property, without due process of law…."**

3. The Fourteenth Amendment (Section 1) to the United States Constitution provides, in relevant part: **"…No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of …property, without due process of law…."**

4. The Tax Injunction Act, 28 U.S.C. Section 1341, provides that "district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law **where a plain, speedy and efficient remedy may be had in the courts of such State."**

STATEMENT OF THE CASE
A. OVERVIEW

"Congress shall make no law … abridging …the Right of the People … to petition the government for a redress of grievances." U.S. Constitution, First Amendment.

However, the U.S. Court of Appeals has implicitly ruled that the Tax Injunction Act (28 U.S.C. 1341) can deprive and deny Petitioner of his Right to Petition his County government for a redress of grievances regarding a *Special law* the County has *admitted* in court was adopted in violation of the Home Rule Article of the New York thereby rendering its enforcement a remediable constitutional tort.

Petitioner came to federal court because the members of the Washington County Board of Supervisors refused to respond to his Petition for a Redress of the Grievances.

The issue presented to the District Court is whether the County Board of Supervisors, under the Petition Clause of the First Amendment, is obligated to respond to Plaintiffs' Petition for Redress, and whether Plaintiffs can hold the County Board of Supervisors accountable, not only to the Home Rule provision of the NY Constitution, but to the Petition Clause itself, by retaining their County property tax money in a trust account until their grievances regarding the admitted constitutional tort are Redressed, without retaliation by the County. Appendix G, pages A 41-71 hereto is a copy of the entire Complaint less exhibits.[1] See LCA 242-413 for the full complaint with its exhibits.

The issue presented for consideration is the meaning of the Petition Clause of the First Amendment: to wit, what are Plaintiffs' Rights, and what is government's lawful obligation to the People, under the Petition Clause.

By its decision, the U.S. Court of Appeals implies the Petition Clause was intended to be without effect: government has no lawful obligation to respond to the People's Petitions, and Plaintiffs' have no Rights under the Petition Clause (other than speech).

There is no mention by the U.S. Court of Appeals of the **only** issue presented by Plaintiffs for the Court's consideration, Plaintiffs' Right to Petition for Redress and the impermissibility of the Respondents' retaliation against Plaintiffs for exercising that Right. This omission is an injustice. The decision by the lower court speaks only to the Tax Injunction Act and ignores the substance of Plaintiffs' complaint, including Plaintiffs' asserted Right to Petition. This is also an injustice.

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[1] References beginning with "A" are to pages numbers in the Appendix herein. References beginning with "LCA" are to page numbers in the lower court's Appendix.

Petitioner argues herein that his Right to Petition for Redress of the Grievance is a substantive, distinctive Right which did not derive from and cannot be diminished, diluted or otherwise set aside by Congress. Petitioner argues his Right to Petition is a Right to *exact* a repair to a breakdown in constitutional governance in his County, not merely to utter speech about it. Petitioner argues that this Right did not come from Congress. No Act of Congress can abridge the Right, directly or indirectly.

Petitioner argues that this Individual Right is nothing less than the "capstone" Right of the Bill of Rights and that its exercise is a direct enjoyment of popular sovereignty and self-government as guaranteed by our founding documents.

This is a case of first impression requiring a determination of the full contours of the meaning of the Petition Clause of the First Amendment to the U.S. Constitution.

The United States Court of Appeals has by implication, incorrectly decided this important question of constitutional law, a question that has not been, but should be, settled by this Court.

This case arises under the Petition Clause of the First Amendment to the U.S. Constitution (and under the Fourteenth Amendment), from the failure of the members of the governing body of Washington County, New York to respond to Plaintiffs' proper First Amendment Petitions for Redress of Grievances regarding a constitutional tort – a violation of a substantive mandate of the Home Rule article of the New York Constitution.

New York is a "Home Rule" State. The New York Constitution mandates that *Special laws* of the State (i.e., laws that affect the property, affairs or government of the people of one or more, but not all counties), must be preceded by a request by the affected County(ies), or by the Governor. NY Const. Art. 9, Sec. 2(b)(2).

Respondent Washington County has admitted in federal District Court that the *Special law* that is the subject of this case (Chapter 682 of the NY Laws of 1985) was *not* preceded by a request by Washington County or the Governor. **As District Court Judge Lawrence Kahn wrote in his Decision and Order dismissing**

this case, "At the preliminary injunction hearing ...Washington County conceded that ... a home rule resolution relating to this legislation [Chapter 682] was never passed." Quoting from Judge Kahn's Order) dated December 14, 2004. (A- 13).

By its decision, the U.S. Court of Appeals has implicitly accepted and endorsed Washington County's argument -- that is, while the First Amendment guarantees the Right of the People to Petition government for Redress of Grievances, its failure to explicitly require government to respond to such Petitions means the government has no such obligation to respond.

"It cannot be presumed, that any clause in the Constitution is intended to be without effect." Chief Justice Marshall in *Marbury v. Madison*. 5 U.S. (1 Cranch) 139 (1803). Petitioner argues that to take away government's obligation to respond is to take away the Right to Petition government for Redress of Grievances, and to deprive the People of their essential Sovereignty over the servant government they have created and empowered with limited authority.

Having implicitly adopted this limited and demonstrably flawed interpretation of the Petition Clause, the Court of Appeals then dismissed the case on the ground that the federal Tax Injunction Act (28 U.S.C. section 1341) deprives the Court of jurisdiction. To the contrary, if the Petition Clause both expresses and guarantees a substantive Right, it must include the obligation by government to respond to Petitions for Redress.

Beyond this, even if the Tax Injunction Act could trump the Petition Clause (which is not possible), the Tax Injunction Act would only deprive the federal courts of jurisdiction in matters involving state taxes, "**where a plain, speedy and efficient remedy may be had in the courts of such State.**" *Roswell v. La Salle National Bank*, 67 L. Ed. 2d 464, 473.

In affirming the lower court's decision the Court of Appeals wrote, "New York courts provide a "plain, speedy and efficient" remedy for plaintiffs' claims under 42 U.S.C. section 1983 and the New York State Constitution...and the procedural history of

the instant case is ample verification of this. See *Schulz v. New York State Legislature*, 773 N.Y.S.2d 174 (3rd Dep't 2004); *Schulz v State of New York*, 603 N.Y.S.2d 207 (3rd Dep't 1993)."(*Schulz I* and *II*).

Again, even if the Tax Injunction Act could trump the Petition Clause and if the "remedy" within the meaning of the Tax Injunction Act requires substance over the mere "procedural" freedom to file a complaint in state court, then, as the record clearly shows, there is no remedy available in state court to Plaintiffs' Chapter 682, Home Rule grievance. See Plaintiffs' affidavit with its documentary evidence. LCA 242-413.

It is the inability to secure redress from any judicial forum or from the Defendants that is at the root of Petitioner's direct exercise of the Right to Petition, including the retention of property taxes to secure such redress.

Petitioner invites this Court's attention to the fact that Washington County argued on the record in the District Court that, "[T]his case has nothing to do with 682...he [Schulz] is correct that he raised the issue of this constitutionality of 682 in 1992...The Appellate Division dismissed the petition...**he's correct, they did not expressly address the 682 claim...Twice in two separate actions he raised the constitutionality of 682....**" Transcript, page 17, line 4-7. A- 72.

The County attorney, who confessed in the hearing in federal District Court, also confessed under oath *in State Court*, that Chapter 682 was not preceded by the constitutionally mandated request by the County or by the Governor. A-30.

No more proof of the unavailability of a judicial remedy to this grievance should be required than the fact that after the decisions in *Schulz I* and *Schulz II*, Chapter 682 is still in full force and effect.

In an argument marked by contemptuous boldness, Washington County also argued on the record in the District Court that, "[E]ven if 682 is unconstitutional, that does not make any difference...The question is, does 1341 bar this Court from

exercising jurisdiction...The question is not whether he had an adequate remedy to challenge 682, its whether he had an adequate remedy to challenge the collection of taxes." Transcript, page 15, line 5-7. A-72.

Chapter 682 affects the real property of *only* Washington County. Chapter 682 exempts Washington County from those provisions of NY's General Municipal Law, a *General law,* that prohibits all Counties from using their property taxes to pay the bonds and other obligations of a local Industrial Development Authority ("IDA") and mandates competitive bidding of projects such as the Project authorized by Chapter 682.

Under the Petition Clause, Plaintiffs Petitioned the County Board, individually (A 20-35) and as a whole (A 36-40) for Redress of this grievance, requesting that the unlawful Project be removed from the County budget and that the County cease assessing taxes to finance it.

Plaintiffs established a Trust Account with the County Treasurer as a beneficiary and provided Notice to the Board of Supervisors that they would be depositing their 2004 and 2005 property tax money in the Trust Account where the money would remain until the County removed the Project from the budget and reduced the property tax accordingly or until a court ruled that Chapter 682 was not unconstitutional.

Respondents are impermissibly retaliating under color of law – New York's Real Property Tax law. Washington County has recently seized title to Petitioners' homes and real property.

On June 17, 2006, the County will publicly auction Plaintiffs' properties unless Plaintiffs "repurchase" the properties by paying the County the property taxes being held in Trust as part of their exercise of the First Amendment Right to Petition. Please see (A-73) for a copy of the Notice of Auction for one of Plaintiffs' properties.

B. STATEMENT OF FACTS

The NY Constitution prohibits the State Legislature from passing any law that would affect the property of only Washington County, unless the County or the Governor requests such a law.[2]

Any law passed by the state legislature is "abrogated" if it is "repugnant" to any provision of the State Constitution.[3]

NY State's General Municipal Law prohibits Counties from using the property tax to pay the obligations of Industrial Development Authorities ("IDA").[4]

In 1984, a local attorney (John Lemery) and a local refuse collector and former Queensbury Town councilman (Robert Barber) formed the Falls Energy Company for the purpose of developing a solid waste resource recovery facility in Washington County (the "Project"), utilizing bonds issued by the local IDA to finance construction of the Project and the County's property tax to pay the bonds and other obligations of the IDA.

Lemery and Barber conspired with two members of the Washington County Board of Supervisors to draft a *Special law*, to be passed by the State Legislature, that would exempt the Project from New York State's General Municipal Law section 870 (a *General law*, that prohibited all counties in the State from using the property tax to pay the bonds and other obligations of any IDA), and that would also exempt the Project from New

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[2] " ... the legislature ... Shall have the power to act in relation to the property, affairs or government of any local government only by general law, or by special law only (a) on request of two-thirds of the total membership of its legislative body or on request of its chief executive officer concurred in by a majority of such membership ...." NY Constitution, Article IX, Section 2(b)(2). A "Special law" means, "A law which in terms and effect applies to one or more, but not all, counties ...." Article IX, Section 3(d)(4).

[3] "But all such parts of the common law, and such of said acts ...as are repugnant to this constitution, are hereby abrogated." NY Constitution, Article I, Section 14.

[4] "The bonds or notes and other obligations of the authority shall not be a debt of the state or of the municipality, and neither the State nor the municipality shall be liable thereon, nor shall they be payable out of any funds other than those of the agency." NYS General Municipal Law, Article 18-A, Section 870.

York State's General Municipal Law, section 120w (a *General law* mandating that all such Projects be competitively bid).

One of the two local officials approached was William Nikas, a practicing private attorney who was the Supervisor of the town where the Project was to be constructed, as well as Chairman of the Solid Waste Committee of the Washington County Board of Supervisors. The other local official was Joseph Rota, who was the Chairman of the County Board of Supervisors.

In April 1985, Nikas negotiated the language of Assembly Bill A. 937 and Senate Bill S. 755 (Chapter 682) with Assemblyman Kelleher and State Senator Stafford). LCA-51, A-27.

Without a request by the County Board of Supervisors or the Governor, as *mandated* by NY Const. Article 9, Kelleher and Stafford introduced the bill in the legislature as a S*pecial law.* The bills were passed and sent to the Governor for his action.

On June 28, 1985, Rota wrote to the Governor's Secretary, requesting that the Governor approve the bill because the Washington County Board of Supervisors "unanimously approved the concept and is in <u>full</u> support." (emphasis in the original) LCA-53, A-29. In fact, Rota filed a false statement. Other than Nikas and Rota, the other members of the County Board of Supervisors and the public were completely *unaware* that Stafford and Kelleher were asked to pass any such law. The subject never appeared in the minutes of any Board meeting.

Proof of this was provided by the Washington County attorney and the then Chairman of the Board of Supervisors, who **CONCEDED,** under oath in State Court**,** that although explicitly required by the NY Constitution, Chapter 682 was not preceded by a request by the County or by the Governor. LCA-56, A-30.[5]

The Governor signed the bill, exempting the Project from the State's competitive bidding laws and authorizing the County to

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[5] Selected paragraphs from a Verified Answer in response to a lawsuit in State Supreme Court.

levy the cost of the Project against the taxable real property. LCA-365, A-26.[6]

In sum, Chapter 682 was adopted without a formal request by the County as mandated by Article IX of the NY Constitution, without general public knowledge or public review or notice, and after the filing by Washington County Board Chairman Joseph Rota, of a false instrument. These are material facts not at issue.

For seven years, Chapter 682 was kept from public knowledge. In 1992, the Project started commercial operation. Washington County and Warren County began using their property tax revenues to pay the bonds and other obligations of the IDA.[7]

Petitioner Schulz and others sued the Counties for violating NY General Municipal Law section 870, which prohibits counties from using property taxes to pay the obligations of quasi-governmental IDAs. *Schulz v State of New York*, 603 N.Y.S.2d 207 (3d Dept 1993). (*Schulz I*).

In response, the Chairman of the Board of Supervisors filed an affidavit with the State court, saying use of the property tax to pay the obligations of the IDA had been authorized by the state legislature with the passage of a Chapter 682. LCA-63, A-32[8]

This was the first public disclosure in the Counties and the first the Plaintiffs knew about Chapter 682. Schulz researched the minutes of the Board meetings and other official records of the Washington County Board of Supervisors and could find no evidence of any mention of the subject matter of Chapter 682, much less a vote by the Board requesting adoption of such a law.

In reply to the State Court, Schulz argued that Chapter 682 was unconstitutional and the use of the property tax to pay the obligations of the IDA was unlawful. LCA 383-386. However,

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[6] Copy of Chapter 682 of the NY Laws of 1985, a *Special law*.

[7] The counties have been doing so ever since. Without a court order, the counties will continue doing so until 2012.

[8] Selected paragraphs from Affidavit, dated 8/25/92, *Schulz I*.

the Court dismissed the case without a judicial memorandum or justification for its decision.

As the recorded facts of the case prove, Schulz pursued the Chapter 682 issue on appeal. However, the decision by the state appellate court also failed to encompass the Chapter 682 home rule issue, just as the lower courts had in *Schulz I* and *Schulz II*.

The record before the court proves that although the constitutionality of Chapter 682 was timely and properly challenged in State Court, no remedy was available in either *Schulz I*, which was filed in 1992 and finally "determined" in 1993, or in *Schulz II*, which was filed in 1998 and finally "determined" in 2004. See Point VI below.

In 2003, with no "plain, speedy and efficient remedy" available in the State judiciary, Plaintiffs directly petitioned each member of the Washington County Board of Supervisors for Redress of the Grievance. Each Petition included a statement of the grievance and a prayer for relief. A 20-35.[9]

There was no response. Schulz then Petitioned the full Board for Redress, citing the Petition Clause and annexing copies of ten Law Review Articles on the subject. The Petition informed the Supervisors that under the Petition Clause Petitioners would be exercising their Right of Redress before taxes, by establishing a Trust Account for their property taxes. A-36[10]

Plaintiffs provided the Treasurers of the Counties with a copy of the Trust Account, saying that pursuant to the Petition Clause their tax money would remain in the account until the Counties responded to the Petitions for Redress. For a copy of the entire Declaration of Trust, see LCA. 119-183

The Counties began to penalize Plaintiffs for not paying their property taxes. LCA-191.

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[9] Petition for Redress that was served on each member of the Board.

[10] Petition to the full Board of Supervisors, minus the law review articles on the Right to Petition that were annexed to and filed with the Petition.

On November 17, 2004, Plaintiffs Petitioned the federal District Court, seeking, *inter alia*: a) declaratory relief by constraining Defendants to meet their obligations under the Petition Clause of the First Amendment by addressing the issues raised in their Petitions for Redress; and b) injunctive relief by prohibiting Defendants from taking any further retaliatory action against Plaintiffs for retaining their money until their grievances are redressed. A 41-70 is a copy of the full complaint, less exhibits.

On April 7, 2006, Plaintiffs received notice that Washington County had taken title to their properties and will auction the properties to the highest bidder on June 17, 2006, unless Plaintiffs repurchase their properties from the County by June 9, 2006 for the amount of taxes due in 2004 and 2005, plus interest, penalties and other charges. A-73[11]

C. FEDERAL JURISDICTION IN DISTRICT COURT

The court of original instance, the U.S. District Court for the Northern District of New York, had jurisdiction under 28 U.S.C. Sections 1331 and 1343(3) and 42 U.S.C. Section 1983.

REASONS FOR GRANTING THE WRIT

Petitioner presents six reasons for granting the Writ: 1) This is a First Amendment Case of First Impression; 2) The Petitions for Redress Were Proper; 3) Government is Obligated to Respond to Proper Petitions for Redress; 4) The Right to Petition Includes the Right of Redress Before Taxes; 5) The Tax Injunction Act Cannot Trump the Constitution; It is Irrelevant Here; and 6) There was no adequate Remedy Available in State Court.

I. THIS IS A FIRST AMENDMENT CASE OF FIRST IMPRESSION

This is a case of first impression requiring a determination of the full contours of the meaning of the Petition Clause of the First Amendment to the U.S. Constitution.

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[11] One of the Notices that Petitioners' properties will be auctioned.

The United States Court of Appeals has by implication, incorrectly decided this important question of constitutional law, a question that has not been, but should be, settled by this Court.

II. THE PETITIONS FOR REDRESS ARE "PROPER"

The term "Petition" is not defined in the Constitution. To be sure, a communication, to be protected as a Petition to the Government for Redress of Grievances would have to embody certain components to ensure that the document was a Petition and not a "pretended petition."

For obvious reasons, Petitioner does not argue that all communications to the government, or just any document, communication or transaction with the government, can or should be regarded as a constitutionally protected Petition for Redress of Grievances. The Petitions for Redress giving rise to the cause of action in the instant controversy meet or exceed any rational standard for Petitions protected by the First Amendment.

For instance, Plaintiff's Petitions for Redress:

- are serious and documented, not frivolous.
- contain no falsehoods.
- are not absent probable cause.
- have the quality of a dispute.
- come from a person outside the formal political culture.
- contain both a "direction" and a "prayer" for relief.
- have been punctilious.
- address public, collective grievances.
- involve constitutional principles not political talk.
- have been signed only by citizens.
- have been dignified.
- have widespread participation and consequences.
- are instruments of deliberation not agitation.
- provide new information.
- do not advocate violence or crime.

More importantly though, Plaintiffs' Petitions to the government contain and detail specific allegations of *constitutional torts*

committed by the government against the Plaintiffs that have directly resulted in the loss of fundamental Rights and Liberties.

However processed and in whatever forum, Plaintiffs' Petitions for Redress are formal, peaceful prayers to correct such wrongs, and must be considered, respected and protected within the historically evolved constitutional intent of the Individual, First Amendment Right to Petition.

III. GOVERNMENT IS OBLIGATED TO RESPOND TO PROPER PETITIONS FOR REDRESS OF GRIEVANCES

a. Overview of the History, Meaning, Effect and Significance of the Right to Petition

Although the term "petition" is not defined by the Constitution, it is clear the United States Supreme Court has interpreted the "Petition Clause" to apply in a variety of circumstances, noting the right to petition the representatives of the people in Congress, to petition the Executive Branch, and the right of access to the courts. The Supreme Court has also determined that it is appropriate to give an alleged intrusion on First Amendment rights particular scrutiny where the Government may be attempting to chill the exercise of First Amendment rights because the exercise of those rights would adversely affect the Government's own interests.

Although the courts have not previously addressed the precise issue presented here, the courts have recurrently treated the Right to Petition similarly to, and frequently as overlapping with, the First Amendment's other guarantees of free expression. See, *e. g.*, *NAACP* v. *Claiborne Hardware Co.*, 458 U.S. 886, 909-912, 915 (1982); *Mine Workers* v. *Illinois Bar Assn.*, 389 U.S., at 221-222; *Adderley* v. *Florida*, 385 U.S. 39, 40-42 (1966); *Edwards* v. *South Carolina*, 372 U.S. 229, 234-235 (1963); *NAACP* v. *Button*, 371 U.S. 415, 429-431 (1963).

The Right To Petition is a distinct, substantive Right that has been violated by Respondents who *are* obligated to respond and have failed to do so. Popular sovereignty depends upon and is

directly exercised through the People's Right of Response. Though the Right to Popular Sovereignty and its "protector" Right, the Right of Petition for Redress have become somewhat forgotten, they took shape early on by Government's *response* to Petitions for Redress of Grievances.[12]

The Government is obligated to respond to Petitions for Redress of Grievances, especially when, as in the present case, the oppressions are *ultra vires*, constituting constitutional torts. The underlying, fundamental Right is not changed by the fact that the Petition Clause lacks an affirmative statement that Government shall respond to Petitions for Redress of Grievances.

"It cannot be presumed, that any clause in the Constitution is intended to be without effect." Chief Justice Marshall in *Marbury v. Madison*. 5 U.S. (1 Cranch) 139 (1803). For instance, while the 26th Amendment guarantees all citizens above the age of 18 the Right to Vote, it does not contain an affirmative statement that the Government shall count the votes. The enumeration in the Constitution of the Right to Vote and to Petition the Government for Redress of Grievances cannot be

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[12] See A SHORT HISTORY OF THE RIGHT TO PETITION GOVERNMENT FOR THE REDRESS OF GRIEVANCES, Stephen A. Higginson, 96 Yale L.J. 142(November, 1986); "SHALL MAKE NO LAW ABRIDGING . . .": AN ANALYSIS OF THE NEGLECTED, BUT NEARLY ABSOLUTE, RIGHT OF PETITION, Norman B. Smith, 54 U. Cin. L. Rev. 1153 (1986); "LIBELOUS" PETITIONS FOR REDRESS OF GRIEVANCES -- BAD HISTORIOGRAPHY MAKES WORSE LAW, Eric Schnapper, 74 Iowa L. Rev. 303 (January 1989); THE BILL OF RIGHTS AS A CONSTITUTION, Akhil Reed Amar, 100 Yale L.J. 1131 (March, 1991); NOTE: A PETITION CLAUSE ANALYSIS OF SUITS AGAINST THE GOVERNMENT: IMPLICATIONS FOR RULE 11 SANCTIONS, 106 Harv. L. Rev. 1111 (MARCH, 1993); SOVEREIGN IMMUNITY AND THE RIGHT TO PETITION: TOWARD A FIRST AMENDMENT RIGHT TO PURSUE JUDICIAL CLAIMS AGAINST THE GOVERNMENT, James E. Pfander, 91 Nw. U.L. Rev. 899 (Spring 1997); THE **VESTIGIAL CONSTITUTION:** THE HISTORY AND SIGNIFICANCE OF THE RIGHT TO PETITION, Gregory A. Mark, 66 Fordham L. Rev. 2153 (May, 1998); DOWNSIZING THE RIGHT TO PETITION, Gary Lawson and Guy Seidman, *93 Nw. U.L. Rev. 739* (Spring 1999); A RIGHT OF ACCESS TO COURT UNDER THE PETITION CLAUSE OF THE FIRST AMENDMENT: DEFINING THE RIGHT, Carol Rice Andrews, 60 Ohio St. L.J. 557 (1999); MOTIVE RESTRICTIONS ON COURT ACCESS: A FIRST AMENDMENT CHALLENGE, Carol Rice Andrews, 61 Ohio St. L.J. 665 (2000).

construed to deny or disparage the Right to have the Votes counted or the Right to a response to Petitions for Redress.

The Right to Petition is a distinctive, substantive Right, from which other substantive First Amendment Rights were *derived*. The Rights to free speech, press and assembly originated as *derivative* Rights insofar as they were necessary to protect the *preexisting* Right to Petition. Petitioning, as a way of holding Government accountable to natural Rights, originated in England in the 11th century[13] and gained recognition as a Right in the mid 17th century.[14] Free speech Rights first developed because members of Parliament needed to discuss freely the Petitions they received.[15] Publications reporting Petitions were the first to receive protection from the frequent prosecutions against the press for seditious libel.[16] Public meetings to prepare Petitions led to recognition of the Right of Public Assembly.[17]

In addition, the Right to Petition was widely accorded greater importance than the Rights of free expression. For instance, in the 18th century, the House of Commons, [18] the American Colonies, [19] and the first Continental Congress[20] gave official recognition to the Right to Petition, but not to the Rights of Free Speech or of the Press.[21]

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[13] Norman B. Smith, "Shall Make No Law Abridging...": Analysis of the Neglected, But Nearly Absolute, Right of Petition, 54 U. CIN. L. REV. 1153, at 1154.

[14] See Bill of Rights, 1689, 1 W & M., ch. 2 Sections 5,13 (Eng.), reprinted in 5 THE FOUNDERS' CONSITUTION 197 (Philip B. Kurland & Ralph Lerner eds., 1987); 1 WILLIAM BLACKSTONE, COMMENTARIES 138-39.

[15] See David C. Frederick, *John Quincy Adams, Slavery, and the Disappearance of the Right to Petition*, 9 LAW & HIST. REV. 113, at 115.

[16] See Smith, *supra* n.4, at 1165-67.

[17] See Charles E. Rice, *Freedom of Petition*, in 2 ENCYCLOPEDIA OF THE AMERICAN CONSTITUTION 789, (Leonard W. Levy ed., 1986)

[18] See Smith, *supra* n4, at 1165.

[19] For example, Massachusetts secured the Right to Petition in its Body of Liberties in 1641, but freedom of speech and press did not appear in the official documents until the mid-1700s. See David A. Anderson, *The Origins of the Press Clause*, 30 UCLA L. REV. 455, 463 n.47 (1983).

[20] See id. at 464 n.52.

[21] Even when England and the American colonies recognized free speech Rights, petition Rights encompassed freedom from punishment for petitioning,

The historical record shows that the Framers and ratifiers of the First Amendment also understood the Petition Right as distinct from the Rights of free expression. In his original proposed draft of the Bill of Rights, Madison listed the Right to Petition and the Rights to free speech and press in two separate sections.[22] In addition, a "considerable majority" of Congress defeated a motion to strike the assembly provision from the First Amendment because of the understanding that all of the enumerated rights in the First Amendment were separate Rights that should be specifically protected.[23]

The zone of interest to be protected by the Petition Clause goes beyond the Clause itself to all natural Rights. The Petition Clause guarantees the Right to hold Government accountable to each provision of the Constitution through citizen participation in their Right to self-government.

Petitioning Government for Redress has played a key role in the development, exercise and enforcement of popular sovereignty throughout British and American history.[24] In medieval England, petitioning began as a way for barons to inform the King of their concerns and to influence his actions.[25] Later, in the 17th century, Parliament gained the Right to Petition the King and to bring matters of public concern to his attention.[26] This broadening of

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whereas free speech Rights extended to freedom from prior restraints. See Frederick, *supra* n6, at 115-16.

[22] See New York Times Co. v. U.S., 403 U.S. 670, 716 n.2 (1971)(Black, J., concurring). For the full text of Madison's proposal, see 1 ANNALS OF CONG. 434 (Joseph Gales ed., 1834).

[23] See 5 BERNARD SCHWARTZ, THE ROOTS OF THE BILL OF RIGHTS at 1089-91 (1980).

[24] See Don L. Smith, *The Right to Petition for Redress of Grievances: Constitutional Development and Interpretations* 10-108 (1971) (unpublished Ph.D. dissertation) (Univ. Microforms Int'l); K. Smellie, Right to Petition, in 12 ENCYCLOPEDIA OF THE SOCIAL SCIENCES 98, 98-101 (R.A. Seiligman ed., 1934).

[25] The Magna Carta of 1215 guaranteed this Right. See MAGNA CARTA, ch. 61, reprinted in 5 THE FOUNDERS' CONSTITUTION, *supra* n.5, at 187.

[26] See PETITION OF RIGHT chs. 1, 7 (Eng. June 7, 1628), reprinted in 5 THE FOUNDERS' CONSTITUTION, *supra* n5 at 187-88.

political participation culminated in the official recognition of the right of Petition in the People themselves.[27]

The People used this newfound Right to question the legality of Government actions,[28] to present their views on controversial matters,[29] and to demand that the Government, *as the creature and servant of the People, be responsive to the popular will.*[30]

In the American colonies, disenfranchised groups used Petitions to seek government accountability for their concerns and to rectify Government misconduct.[31]

By the nineteenth century, Petitioning was described as "essential to ... a free government"[32] – an inherent feature of a republican democracy,[33] and one of the chief means of enhancing Government accountability through the participation of citizens.

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[27] In 1669, the House of Commons stated that, "it is an inherent right of every commoner in England to prepare and present Petitions to the House of Commons in case of grievances, and the House of Commons to receive the same." Res. of the House of Commons (1669), reprinted in 5 THE FOUNDERS' CONSTITUTION, *supra* n5 at 188-89.

[28] For example, in 1688, a group of bishops sent a petition to James II that accused him of acting illegally. See Smith, *supra* n4, at 1160-62. James II's attempt to punish the bishops for this Petition led to the Glorious Revolution and to the enactment of the Bill of Rights. See Smith, *supra* n15 at 41-43.

[29] See Smith, *supra* n4, at 1165 (describing a Petition regarding contested parliamentary elections).

[30] In 1701, Daniel Defoe sent a Petition to the House of Commons that accused the House of acting illegally when it incarcerated some previous petitioners. In response to Defoe's demand for action, the House released those Petitioners. See Smith, *supra* n4, at 1163-64.

[31] See RAYMOND BAILEY, POPULAR INFLUENCE UPON PUBLIC POLICY: PETITIONING IN EIGHTEENTH-CENTURY VIRGINIA 43-44 (1979).

[32] THOMAS M. COOLEY, TREATISE ON THE CONSTITUTIONAL LIMITATIONS WHICH REST UPON THE LEGISLATIVE POWER OF THE STATES OF THE AMERICAN UNION 531 (6th ed. 1890).

[33] See CONG. GLOBE, 39th Cong., 1st Session. 1293 (1866) (statement of Rep. Shellabarger) (declaring petitioning an indispensable Right "without which there is no citizenship" in any government); JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES 707 (Carolina Academic Press ed. 1987) (1833) (explaining that the Petition Right "results from [the] very nature of the structure [of a republican government]").

b. Accountability Was Understood To Demand Government Response To Petitions.[34]

American colonists, who exercised their Right to Petition the King or Parliament, [35] expected the Government to receive *and respond* to their Petitions.[36] The King's persistent refusal to answer the colonists' grievances outraged the colonists and as the "**capstone**" **grievance**, underpinning the fundamental principal of popular sovereignty, was a significant factor that led to the American Revolution.[37]

Frustration with the British Government led the Framers to consider incorporating a people's right to "instruct their Representatives" in the First Amendment.[38] Members of the First Congress easily defeated this right-of-instruction proposal.[39] Some discretion to reject petitions that "instructed government," they reasoned, would not undermine Government accountability to the People, as long as Congress had a duty to consider petitions *and fully respond to them*.[40]

Congress's response to Petitions in the early years of the Republic also indicates that the original understanding of

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[34] See Frederick, *supra* n7 at 114-15 (describing the historical development of the duty of government response to Petitions).

[35] See DECLARATION AND RESOLVES OF THE CONTINENTAL CONGRESS 3 (Am. Col. Oct. 14, 1774), reprinted in 5 THE FOUNDERS' CONSTITUTION, *supra* n5 at 199; DECLARATION OF RIGHTS OF THE STAMP ACT CONGRESS 13 (Am. Col. Oct. 19, 1765), *reprinted in id.* at 198.

[36] See Frederick, *supra n7* at 115-116.

[37] See THE DECLARATION OF INDEPENDENCE para. 30 (U.S. July 4, 1776), reprinted in 5 THE FOUNDERS' CONSTITUTION, *supra* n5 at 199; Lee A. Strimbeck, The Right to Petition, 55 W. VA. L. REV. 275, 277 (1954).

[38] See 5 BERNARD SCHWARTZ, *supra* n15, 1091-105.

[39] The vote was 10-41 in the House and 2-14 in the Senate. See *id.* at 1105, 1148.

[40] See 1 ANNALS OF CONG. 733-46 (Joseph Gales ed., 1789); 5 BERNARD SCHWARTZ, *supra* n15, at 1093-94 (stating that representatives have a duty to inquire into the suggested measures contained in citizens' Petitions) (statement of Rep. Roger Sherman); *id.* at 1095-96 (stating that Congress can never shut its ears to Petitions) (statement of Rep. Elbridge Gerry); *id.* at 1096 (arguing that the Right to Petition protects the Right to bring non-binding instructions to Congress's attention) (statement of Rep. James Madison).

Petitioning *included a governmental duty to respond.* Congress viewed the receipt and serious consideration of every Petition as an important part of its duties.[41]

Congress referred Petitions to committees[42] and even created committees to deal with particular types of Petitions.[43] Ultimately, most Petitions resulted in either favorable legislation or an adverse committee report. [44]

Thus, throughout early Anglo-American history, general petitioning (as opposed to judicial petitioning) allowed individual citizens a means of direct political participation that in turn demanded government *response* and promoted accountability to the Constitution.

The Supreme Court has characterized the interest underlying the Petition Right broadly as an interest in self-government. See *McDonald v. Smith*, 472 U.S. 479, 483 (1985).

The Petition Clause confers a positive right for citizens to participate directly in government and to demand that the Government consider and respond to their Petitions.

Petitioning the Government for Redress of Grievances is the only non-violent way to hold Government accountable to its primary purpose of protecting the unalienable Rights of the Individual. If the Government of the People cannot be held constitutionally obligated to listen and honestly respond to The

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[41] See STAFF OF HOUSE COMM. ON ENERGY AND COMMERCE, 99TH CONG., 2D SESS., PETITIONS, MEMORIALS AND OTHER DOCUMENTS SUBMITTED FOR THE CONSIDERATION OF CONGRESS, MARCH 4, 1789 TO DECEMBER 15, 1975, at 6-9 (Comm. Print 1986) (including a comment by the press that "the principal part of Congress's time has been taken up in the reading and referring Petitions" (quotation omitted)).

[42] See Stephen A. Higginson, Note, *A Short History of the Right to Petition the Government for the Redress of Grievances,* 96 YALE L. J. 142, at 156.

[43] See H.J., 25th Cong., 2d Sess. 647 (1838) (describing how petitions prompted the appointment of a select committee to consider legislation to abolish dueling).

[44] See Higginson, n34 at 157.

People's proper and responsible Petitions for Redress, individual Rights will be predictably and irretrievably lost.

The historical record shows that the Framers and ratifiers of the First Amendment clearly understood the Petition Right as distinct from the ancillary Rights of free expression and the other First Amendment Rights, and that it included the Right to a response.

The zone of interest that is uniquely served by Petitions for Redress is the Constitution itself, *all* of it, and each natural Right, enumerated or not. Without the Government's obligation to respond to Petitions for Redress of Grievances, the People have no non-violent way to enforce the rules laid out in the founding documents to govern the ongoing contest of Freedom in America. Freedom is a fragile thing, never more than a generation away from extinction. Freedom is not to be considered as inherited. It needs to be defended against Government misconduct by each generation. The Petition is to the individual and the minority as the Ballot is to the majority. Take away the Government's obligation to respond and we take away the Right to Petition. Take away the Right to Petition and we take away the ability to limit the Government to our written constitutions, state and federal. Plaintiffs have a Right to a response to their proper Petitions for Redress. To say otherwise is to deny the Right to Petition and the enjoyment of Popular Sovereignty.

Non-responsive "responses," including silence, are repugnant to the Petition Clause, and Petitioners have an unalienable Right to peaceably enforce each of their unalienable Rights, without disturbing the public tranquility when the Government refuses to respond to proper Petitions for Redress. *Any Right that is not enforceable is not a Right.* The only non-violent means by which The People can ultimately keep an arrogant, recalcitrant Government from acting without authority is by retaining their money until their Grievances are Redressed.

c. Retaliation is Prohibited

The First Amendment Right to Petition Government for Redress of Grievances includes protection from retaliation. A retaliatory action is one brought with a motive to *interfere* with the exercise of protected Rights. A clear and present danger to the public interest is required before the Government can restrict Rights. Respondents have made no such claim.

Respondents' retaliation against Petitioners is without reasonable cause; it is not objective; there is no clear and present danger to the Counties that would justify their punishment of Petitioners for performing a self-government function. The Petition clause was included in the First Amendment to ensure the growth and preservation of democratic self-governance.

The right to Petition requires stringent protection. "The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to Petition for a Redress of Grievances." *United States* v. *Cruikshank*, 92 U.S. 542, 552 (1876).

The First Amendment of the Federal Constitution expressly guarantees the Right against abridgment by Congress. The Right is one that cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all civil and political institutions, -- principles which the Fourteenth Amendment embodies in the general terms of its Due Process clause. *Hebert* v. *Louisiana*, 272 U.S. 312, 316; *Powell* v. *Alabama*, 287 U.S. 45, 67.

Citizens cannot be punished for exercising this Right "without violating those fundamental principles of liberty and justice which lie at the base of all civil and political institutions," *De Jonge* v. *Oregon*, 299 U.S. 353, 364 (1937).

If the ability to enforce the right to petition one's representative could be arbitrarily ignored, refused, suppressed or punished, popular sovereignty is threatened. *See* G. WOOD, The Creation Of The American Republic 1776-1787, at 363 (1969).

Petitions are tied to distrust of and the imperfect nature of government officials and to a refusal by elected representatives to equate or subordinate their will to Individual Rights. Undue assertions of parliamentary privilege and punishing petitioners who were said to menace the dignity of the assembly jeopardize the institution of petitioning. Higginson, 96 Yale L.J. 142, n45.

There is no evidence in the Record of anything but Plaintiffs' open, honest and humble actions in relation to the Petition process. There is nothing in the record of any inappropriate or untoward behavior by Plaintiffs.

Today, Petitioners are being penalized for exercising a constitutional right of Petition. Respondents have implied that they are not targeting Petitioners because of the constitutional principles they espouse. However, that pretext is usually given, as we know from the many cases over the centuries, involving arrests of minority groups for "breaches of the peace, unlawful assemblies, and parading without a permit." In 1670, the charge against William Penn, who preached a nonconformist doctrine in London, was that he caused "a great concourse and tumult of people" in contempt of the King and "to the great disturbance of his peace." 6 How. St. Tr. 951, 955.

Respondents are moving to silence Petitioners, who question Government's behavior and preach a nonconformist doctrine, that is, "the Government has an obligation to respond to the Petitions for Redress when they have acted unconstitutionally, and the People have a Right to hold government accountable by retaining their money until their Rights are Redressed."

Abuse of power is usually sought to be justified by some legitimate function of government (such as enforcement of a Tax law). Respondents do violence to the First Amendment when they attempt to turn a legitimate "Petition for Redress of Grievances" into a charge of "failure to pay property tax."

d. The Production of Information and Answers to Questions is the Only Legitimate Response

Petitioning the Government for a Redress of Grievance naturally includes the ability to compel admissions – the production of information and answers to questions. Jefferson wrote: "The right of freely examining public characters and measures, and of free communication among the people thereon...has ever been justly deemed the *only effectual guardian* of every *other* right."

IV. THE RIGHT TO PETITION INCLUDES THE RIGHT OF REDRESS BEFORE TAXES

The right to Petition Government officials for Redress of Grievances is the basis of Liberty. The founders recognized this Right in the very first amendment to the Constitution for they understood that without it, the People could not have a government whose power is limited by the consent of the People.

The Founding Fathers declared that the Right of Redress of Grievances *includes* the Right to withhold payment of taxes while the grievance remains. In 1774, in an official Act passed unanimously by the Continental Congress, the Founders wrote:

> "If money is wanted by rulers who have in any manner oppressed the People, they may retain it until their grievances are redressed, and thus peaceably procure relief, without trusting to despised petitions or disturbing the public tranquility." *Continental Congress To The Inhabitants Of The Province Of Quebec. Journals of the Continental Congress. 1774 -1789. Journals 1: 105-13.*

By the First Amendment, the founding fathers secured for posterity the Right of Redress of Grievances *before* payment of Taxes and they made the Right of Redress *before* Taxes operate against "*the government*," that is, against *all branches* of "the government." Redress reaches all.

The right to Petition for the Redress of Grievances has an ancient history and is not limited to writing a letter or sending a telegram to an elected representative; it is not confined to appearing

before the local city council, or writing letters to government officials. See N. A. A. C. P. v. *Button*, 371 U.S. 415, 429-431.

As the record reveals, conventional methods of Petitioning have been shut off to Petitioners. There is no remedy available in state Court. Unconventional methods of Petitioning [such as redress before taxes] are protected as long as the Assembly and Petition are peaceful. The Right of Redress *before* Taxes is a peaceful, integral part of the Right to Petition for Redress of Grievances.

Plaintiffs have an inherent, unalienable Right to *Redress Before Taxes,* guaranteed by the First *and Ninth* Amendments. Under the facts and circumstances of this case, the People's retention of their money until their grievances are Redressed is consistent with and protected by the Right to Petition. It remains as the only peaceful method available to Petitioners to enforce their natural Rights, absent an effective declaration by the Court constraining the Respondents to respond to the Petitions.

V. THE TAX INJUNCTION ACT CANNOT TRUMP THE CONSTITUTION; IT IS IRRELEVANT HERE

As would be true with any legislative schema, The Tax-Injunction Act, 28 U.S.C. 1341, cannot bar plaintiffs from exercising or enforcing their Right to Petition the Government for Redress of Grievances, particularly grievances involving *constitutional torts*, the issue in the present case.

If not soundly rejected by the Court, any invocation of the Tax-Injunction Act to bar relief would effectively "trump" the Petition Clause and constitute an intolerable violation -- and abandonment -- of the essential principle of Popular Sovereignty as plainly recognized by the founding documents, the Declaration of Independence and the U.S. Constitution.

To fail to recognize and declare the original intent of the Right to Petition is to undermine our Republic and the first of the Great Rights—Government based upon the consent of the People. An **admitted** unconstitutional act of a legislature would be allowed to lie undisturbed, in spite of Plaintiffs' Right to Petition, forcing Petitioners to either succumb to the *ultra vires* demands and pay

the taxes alleged due, or suffer the unjust loss of their homes and real property under the constitutionally violative invocation of the U.S. Tax Injunction Act and the NY Real Property Tax Law.

"An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed." *Norton v. Shelby County*, 118 U.S. 425 (1886).

The U.S. Supreme Court affirmed the lower court's declaration that a legislative act was unconstitutional and of no effect. "...we are of the opinion that the courts below rightly held the statute to be repugnant to the Constitution and non-enforcible." *The Employers' Liability Cases*, 207 U.S. 463, 504.

In reference to another unconstitutional legislative act, the high court held, "That act was therefore as inoperative as if it had never been passed, for an unconstitutional act is not law, and can neither confer a right or immunity nor operate to supersede any existing valid law. *Norton v. Shelby County*, 118 U.S. 425, 442; *Ex parte Siebold*, 100 U.S. 371, 376." *Chicago, Indianapolis & Louisville Railway Company v. Hackett*. 228 U.S. 559 (1913).

Unconstitutional action "confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed." *Linkletter v. Walker*, 381 U.S. 618 (1965).

In 1995, concurring, Justice Scalia, joined by Thomas, wrote, "A court does not -- in the nature of things it *can* not -- give a 'remedy' for an unconstitutional statute, since an unconstitutional statute is not in itself a cognizable 'wrong.' (If it were, every citizen would have standing to challenge every law.) In fact, what a court does with regard to an unconstitutional law is simply to *ignore* it. It decides the case *'disregarding the [unconstitutional] law,'" Marbury* v. *Madison*, 5 U.S. 137, 1 Cranch 137, 178, 2 L. Ed. 60(1803) (emphasis added), because a law repugnant to the Constitution 'is void, and is as no law,' *Ex parte Siebold*, 100 U.S. 371, 376, 25 L. Ed. 717 (1880). Thus, if a plaintiff seeks the return of money taken by the government in reliance on an unconstitutional tax law, the court ignores the tax

law, finds the taking of the property therefore wrongful, and provides a remedy. Or if a plaintiff seeks to enjoin acts, harmful to him, about to be taken by a government officer under an unconstitutional regulatory statute, 'the court enjoins, in effect, not the execution of the statute, but the acts of the official, *the statute notwithstanding.' Massachusetts* v. *Mellon*, 262 U.S. 447, 488-489, 67 L. Ed. 1078, 43 S. Ct. 597 (1923)."(emphasis by Petitioner).*Reynoldsville Casket Co. v. Hyde*, 514 U.S. 749,760.

The Supremacy Clause of the U.S. Constitution gives federal courts the ability to act aggressively in reviewing state legislation. "This Constitution ... shall be the supreme law of the land; and the judges in every State shall be bound thereby ...." Article VI.

The unconstitutionality of Chapter 682 is beyond dispute, having been admitted to by Respondents, both in the Federal District Court and the state Court. Plaintiffs' injuries are personal, distinct and definite, and are traceable to the Respondents' unlawful conduct. Plaintiffs' injuries are likely to be redressed by the requested relief.

An unconstitutional law is void and not enforceable. As the record shows, the Act was born out of fraud and a conspiracy of concealment and silence. Respondents have no rational basis for collecting, committing, expending or assessing property taxes for a *knowingly* unlawful purpose.

There can be no immunity doctrine that can bar Petitioners from maintaining an action for declaratory and injunctive relief against a constitutional tort.

VI. TIA IS NO BAR TO JURISDICTION: REMEDY IS UNAVAILABLE IN STATE COURT

Even if the Tax Injunction Act could trump the Constitution (which is not possible), it was intended to bar actions adversely affecting a state's ability to raise revenue for *bona fide*, constitutional purposes. *HIBBS v Winn*, 124 S. Ct. 2276 (2004).

Respondents have **conceded** the unconstitutionality of Chapter 682 and Respondents have also conceded the fact that the state court has twice issued decisions that failed to encompass the 682 issue even though the issue was timely and properly raised.

Even if the TIA could trump the Constitution (which is not possible), Federal jurisdiction over challenges to state tax schemes is not precluded if state remedies are inadequate. *Kraebel v NYC Dept. of Housing Pres .and Develop't*, 959 F.2d 395, 400 (2d Cir. 1992). Such is the case here.

Even if the TIA could trump the Constitution (which is not possible), this action falls under the exception to TIA's general rule. "The Tax Injunction Act generally prohibits federal district courts from enjoining state tax administration except in instances where the state-court remedy is not 'plain, speedy and efficient.'" *Roswell v. LaSalle Nat'l Bank*, 67 L. Ed. 2d 464, 473.

Even if the TIA could trump the Constitution (which is not possible), "No court of equity will ... allow its injunction to issue to restrain [state officers collecting state taxes], except where it may be necessary to protect the rights of the citizen whose property is taxed, and he has no adequate remedy by the ordinary processes of the law." *Grace Brethren Church* at 412, quoting *Dows v. City of Chicago*, 11 Wall. 108, 110 (1871).

Even if the TIA could trump the Constitution (which is not possible), "The plain, speedy and efficient exception in the Tax Injunction Act ... requires the state-court remedy to meet certain minimal procedural criteria. In particular, a state-court remedy is plain, speedy and efficient only if it provides the taxpayer with a full hearing and judicial determination ...." *Grace Brethren Church* at 411.

As shown above and in the detailed Affidavit by Plaintiffs that was filed in the District Court and that resulted in the County attorney's admission in District Court on the record that Chapter 682 was violative of the Home Rule provisions of the NY Constitution, that this issue was twice presented to state court and that the state appellate court decisions did not encompass the Home Rule issue. Please see (LCA 242-

413), for a copy of the detailed Affidavit that was filed in District Court on December 6, 2004.

In sum, the State Court decisions admittedly did not encompass the Home Rule question, the forums deprived Petitioner of a full hearing and the resultant judicial determinations utterly failed to address the specific constitutional challenges raised regarding the authorization and sale of public bonds to finance a knowingly unconstitutional Project. In short, judicial Due Process is clearly not available in New York State to remedy the grievance.

Even if the Tax Injunction Act could trump the Petition Clause of the First Amendment (which is not possible), "The TIA requires the State to provide taxpayers with a swift and certain remedy .... An action dependent on a court's discretion, for example, would not qualify as a fitting remedy." *HIBBS v. Winn*, 159 L. Ed. 2d, at 182.

Even if the Tax Injunction Act could trump the Petition Clause of the First Amendment (which is not the case), a state-court remedy is "plain, speedy and efficient," only if it provides for a "full hearing and judicial determination." HIBBS at 2289, quoting *Roswell v. La Salle National Bank*, 450 U.S. 503, 514 (1981). As the documentary evidence filed with the District Court by Petitioner Schulz proves, no remedy the Chapter 682 Home Rule issue is available in State Court.

CONCLUSION

Petitioners urge this most Honorable Court to grant this Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

Dated: April 14, 2006

ROBERT L. SCHULZ
Pro Se
2458 Ridge Road
Queensbury, NY 12804
518.656.3578

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
THURGOOD MARSHALL U.S. COURT HOUSE
40 FOLEY SQUARE
NEW YORK 10007

Roseann B. MacKechnie
CLERK

Date:	1/14/06
Docket Number:	05-0259-cv
Short Title:	Schulz v. Washington County Board of Supervisors
DC Docket Number:	04-cv-1375
DC:	NDNY (ALBANY)
DC Judge:	Honorable Lawrence Kahn

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 19th day of January two thousand six.

Robert L. Schulz, Diane Lukaris, Keith Gilligan, Judith Porcaro,

Plaintiffs-Appellants,

Raymond Bassette Sr., Bruce Turnbull, Louis Navarro,

Plaintiffs,

v.

Andrew J. Williamson, individually and in his official capacity as Chairman of the Washington County Board of Supervisors, Washington County Treasurer's Office, Phyllis Cooper, individually and in her official capacity as Washington County Treasurer, Washington County Clerk's Office, Deborah Beahan, individually and in her official capacity as Washington County Clerk, Warren County Board of Supervisors, William H. Thomas, individually and in his official capacity as Chairman of

the Warren County Board of Supervisors, Warren County Treasurer's Office, Francis X. O'Keefe, individually and in his official capacity as Warren County Treasurer, Warren County Clerk's Office, Pamela Vogel, individually and in her official capacity as Warren County Clerk,

Defendants-Appellees.

A petition for panel rehearing and a petition for rehearing en banc having been filed herein by the appellant Robert L. Schulz. Upon consideration by the panel that decided the appeal, it is Ordered that said petition for rehearing is **DENIED.**

It is further noted that the petition for rehearing en banc has been transmitted to the judges for the court in regular active service and to any other judge that heard the appeal and that no such judge has requested that a vote be taken thereon.

For the Court,

Roseann B. MacKechnie, Clerk

By: /S/ Tracy W. Young
Motion Staff Attorney

Appendix B

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 15th day of August, two thousand and four.

PRESENT:

ROSEMARY S. POOLER,
SONIA SOTOMAYOR
Circuit Judges,
EDWARD R. KORMAN
District Judge,*

ROBERT L. SCHULZ, DIANE LUKARIS, KEITH GILLIGAN, JUDITH PORCARO,

Plaintiffs-Appellants,

RAYMOND BASSETTE SR., BRUCE TURNBULL, LOUIS NAVARRO,

Plaintiffs,

-v- (No. 05-0259)

ANDREW J. WILLIAMSON, individually and in his official capacity as Chairman of the Washington County Board of

Supervisors, WASHINGTON COUNTY TREASURER'S OFFICE, PHYLLIS COOPER, individually and in her official capacity as Washington County Treasurer, WASHINGTON COUNTY CLERK'S OFFICE, DEBORAH BEAHAN, individually and in her official capacity as Washington County Clerk, WARREN COUNTY BOARD OF SUPERVISORS, WILLIAM H. THOMAS, individually and in his official capacity as Chairman of the Warren County Board of Supervisors, WARREN COUNTY TREASURER'S OFFICE, FRANCIS X. O"KEEFE, individually and in his official capacity as Warren County Treasurer, WARREN COUNTY CLERK'S OFFICE, PAMELA VOGEL, individually and in her official capacity as Warren County Clerk,

Defendants-Appellees.

Appearing for Plaintiffs-Appellants. Robert L. Schulz, Queensbury,NY, pro se.

Appearing for Defendants-Appellants Andrew J. Williamson, Washington County Treasurer's Office, Phyllis Cooper, Washington County Clerk's Office, and Deborah Beahan: George F. Carpinello, Boies, Schiller & Flexner, LLP, Albany, NY.

Appearing for Defendants-Appellants Warren County Board of Supervisors, William H. Thomas, Warren County Treasurer's Office, Francis X. O'Keefe, Warren County Clerk's Office, and Pamela Vogel: Timothy J. Perry, Sugarman Law Firm, LLP, Syracuse, NY.

Appeal from the United States District Court for the Northern District of New York (Lawrence E. Kahn, J.).

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of said District Court be and it hereby is **AFFIRMED.**

Pro se plaintiffs-appellants appeal from the District Court's judgment, entered December 14, 2004, dismissing their complaint for lack of subject matter jurisdiction, and from the District Court's order entered December 17, 2004, denying their motion to reconsider. We assume the parties' familiarity with the facts, procedural history, and specification of issues on appeal.

We review dismissal for lack of subject matter jurisdiction de novo. Celestine v. Mount Vernon Neighborhood Health Ctr., 403 F.3d 76, 79-80 (2d Cir. 2005). The Tax Injunction Act, 28 U.S.C. § 1341, provides that "district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State." For substantially the reasons cited by the District Court, we find that the District Court was correct in holding that the Tax Injunction Act divested it of jurisdiction over the instant action. Plaintiffs' complaint sought to enjoin defendants from enforcing state tax laws by adding their names to a list of delinquent taxpayers or foreclosing on their real property. New York courts provide a "plain, speedy and efficient" remedy for plaintiffs' claims under 42 U.S.C. § 1983 and the New York State Constitution, see Bernard v. Village of Spring Valley, 30 F.3d 294, 297 (2d Cir. 1994)(holding Section 1983 action in state court was "plain, speedy and effective" remedy as required by Tax Injunction Act), and the procedural history of the instant case is ample verification of this. See Schulz v. New York State Legislature, 773 N.Y.S.2d 174 (3rd Dep't 2004); Schulz v. State of New York, 603 N.Y.S.2d 207 (3d Dep't 1993).

For the foregoing reasons, the judgment of the District Court is AFFIRMED.

Appendix B

FOR THE COURT:
ROSEANN B. MACKECHNIE, Clerk

/S/ Oliva M. George — August 15, 2005
BY: Oliva M. George, Deputy Clerk — DATE

Appendix C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ROBERT L. SCHULZ, et al.,

Plaintiffs,

-v- 1:04-CV-1375 (LEK/RFT)

WASHINGTON COUNTY BOARD OF SUPERVISORS, et al.,

Defendants.

MEMORANDUM DECISION AND ORDER

I. BACKGROUND

Plaintiffs, real property owners in Washington and Warren Counties (collectively "Polaintiffs"), filed the above action alleging that the Defendants, the New York counties of Washington and Warren, as well as several public officials from those counties (collectively "Counties"), retaliated against Plaintiffs for voicing their opposition to what they deemed to be an unconstitutional state law.

On December 14, 2004, the Court entered an order dismissing the case in its entirety because the federal courts lacked subject matter jurisdiction pursuant to the Tax Injunctiion Act, 28 U.S.C. § 1341.[1] (Dkt. No. 14). That same day, the Court received a letter from Plaintiff Schulz, dated December 10, 2004, that asked to reargue the motion for temporary injunctive relief. As judgment has already been entered in this case, the Court will treat that letter as a motion for reconsideration of the December 14 Order that dismissed the case.

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[1] Familiarity with December 14 Order is presumed. The relevant facts and procedural history are set forth therein.

II. DISCUSSION

(a) Motion for Reconsideration

Generally, the prevailing rule in the Northern District "recognizes only three possible grounds upon which motions for reconsideration may be granted; they are (1) an intervening change in controlling law, (2) the availability of new evidence not previously available, or (3) the need to correct a clear error of law or prevent manifest injustice." In re C-TC 9th Ave. P'ship, 182 B.R. 1, 3 (N.D.N.Y. 1995).

It is clear that Plaintiff does not contend that there was an intervening change in controlling law. Although he submits new information, or at least a new summary of his position, he does not claim that this new information he provides to the Court was not previously available. Therefore, the basis for this motion is that this Court must reconsider its decision so as to correct a manifest injustice. The Court will not disregard the law of the prior case unless "the Court has a 'clear conviction of error' with respect to a point of law on which its previous decision was predicated." Fogel v. Chestnutt, 668 F.2d 100, 109 (2d Cir. 1981).

(b) Plaintiffs' December 10 Letter/Motion for Reconsideration

In his letter, Plaintiff Schulz seeks to correct several answers he gave in oral argument on the motion for a preliminary injunction. However, because the Court dismissed the case based upon a lack of subject matter jurisdiction, the instant motion for reconsideration needs to consider only those points now raised by Plaintiff that address this issue.

Generally, Plaintiff Schulz contended in his papers, at the hearing, and again in the motion for reconsideration that the state courts never addressed the merits of his position that Chapter 682 violated the New York Constitution's home rule provision. Although the Third Department may have failed to assess the constitutionality of Chapter 682, their rationale was clear – collateral estoppel and laches barred them from

addressing the issues. See Schulz v. New York State Legis., 278 A.D.2d 710, 712-13 (N.Y. App. Div. 2000). In the December 14 Order, the Court explained that because of these statements, the Tax Injunction Act deprived this Court of subject matter jurisdiction because the New York courts provided a "plain, speedy and efficient remedy," as they had jurisdiction to address the constitutionality of Chapter 682 and the instant retaliation claim.

In relevant part, to again rebut the Defendants' assertion that this Court lacked subject matter jurisdiction, Plaintiff states in his letter:

> The NY courts clearly chose not to reach the merits of the question of the constitutionality of Chapter 682, even though the question and related federal questions were properly presented to the courts in Plaintiff's 1998 lawsuit...In sum, what is painfully clear is the fact that the NY courts have refused to bring the question of constitutionality of Chapter 682 to conclusion... Plaintiff respectfully requests that the court study [paragraphs 9-51 of the Schulz affidavit dated December 6, 2004], for they hold the proof, not only in support of plaintiffs' argument that the NY courts have not determined the constitutionality of Chapter 682, but also in support of plaintiffs' argument regarding this court's subject matter jurisdiction, that is, that the court does, in fact, have subject matter jurisdiction because there is no "plain, speedy and efficient remedy" available in the NY courts when the subject matter of any case deals with the authorization of municipal bonds, even if the authorization is unconstitutional
> Plaintiff Schulz's Dec. 10 Letter at 3.

As Plaintiff Schulz concedes in his letter, the question of the constitutionality of Chapter 682 was put before the New York courts. Id. Although the state courts may not have addressed the question as Plaintiff would have liked, the Third Department made it clear that the issues Plaintiffs raised were barred. See Schulz, 278 A.D.2d 710. As explained in the

December 14 Order, this Court does not sit as an appellate body for those state court decisions.

Although the letter again demonstrates Plaintiffs' adamant opposition to Chapter 682, the points Plaintiff Schulz makes in his letter reiterate the position he took in his papers and at the hearing. The information he supplied is primarily a restatement. Therefore, there is no manifest injustice that has been demonstrated by entry of the decision of December 14, and the Court will not reconsider its decision that the federal courts lack subject matter jurisdiction over his action.

III. CONCLUSION

In accordance with the above, it is hereby

ORDERED, that the motion for reconsideration is **DENIED**; and it is further

ORDERED, that the Clerk serve a copy of this order on all parties.

Date: December 16, 2004
Albany, New York

/S/ Lawrence E. Kahn
Lawrence E. Kahn
U.S. District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ROBERT L. SCHULZ, et al.,

Plaintiffs,

-v- 1:04-CV-1375 (LEK/RFT)

WASHINGTON COUNTY BOARD OF SUPERVISORS, et al.,

Defendants.

MEMORANDUM DECISION AND ORDER[1]

In the present case, Plaintiffs, real property owners in Washington and Warren Counties (collectively "Plaintiffs" or "Property Owners"), move the Court for a preliminary injunction that would require Defendants to (1) remove Plaintiffs' names from the roll of delinquent taxpayers; (2) prohibit the assessment of financial penalties and interest on Plaintiffs' real property, (3) prohibit the initiation of foreclosure proceedings on Plaintiffs' real property; and (4) further prohibit Defendants from taking any other retaliatory action against Plaintiffs.

Defendants, the New York counties of Washington and Warren, as well as several public officials from those counties (collectively "Counties"), contend that this Court lacks subject matter jurisdiction over the instant action pursuant to the Tax Injunction Act, 28 U.S.C. § 1341. The Counties further claim that even if subject matter jurisdiction is proper, the preliminary injunction must be denied because there is no irreparable harm to the Property Owners and no likelihood of success on the merits.

I. BACKGROUND

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[1] For printed publication in the Federal Reporter.

The Plaintiffs contend that the State Legislature passed enabling legislation which allows the real property in the Counties to be taxed in order to pay the principal of and interest on the debt obligations of a public corporation. Plaintiffs' Mem. (Dkt. No. 3) at 1. Specifically, the enabling legislation, adopted as Chapter 682 of the Laws of 1985 (hereinafter "Chapter 682"), allowed Warren and Washington Counties to create a public corporation, the Washington and Warren Counties Industrial Development Agency ("IDA"), which wqs to finance a solid waste resource recovery facility by issuing bonds on which the IDA was solely obligated. See Schulz v. N.Y. State Leg., 5 A.D.3d 885, 886-87 (N.Y. App. Div. 2004). Plaintiffs contend that Chapter 682 was passed without a home rule resolution, a procedure mandated by the New York Constitution.

By way of background, the "home rule" provision of the New York Constitution has been explained by the New York Court of Appeals as follows:

> Article IX, § 2 of the State Constitution grants the Legislature authority to enact a "general law" relating to the property, affairs or government of local governments (NY Const. Art IX, § 2[b][2]. A general law is defined as a "law which in terms and in effect applies alike to all counties..." (NY Const. Art IX, § 3[d][4]). Article IX further provides that a special law relating to the property, affairs or government of any local government may not be enacted without a "home rule message" from the locality or the localities affected by the law (NY Const. Art IX, § 2[b][2]). A home rule message is a "request of two-thirds of the total membership of [the local] legislative body or [a] request of its chief executive officer concurred in by a majority of such membership" id. Patrolmen's Benevolent Assoc. of the City of New York v. City of New York, 767 N.E.2d 116, 120 (NY. 2001).

The Property Owners contend that Chapter 682, which dictated the IDA's financing of the waste facility, was a special act applying only to select New York counties, but because it was not assed with a home rule resolution, it is unconstitutional.

The Property Owners claim that a home rule resolution was avoided because of the conduct of the Chairman of the Washington County Board of Supervisors. The Chairman, in a letter he wrote directly to Governor Cuomo, explained that he had received the full approval and support of the Board of Supervisors for Chapter 682's financing arrangement and requested that the Governor sign it into law. Chapter 682 was enacted. At the preliminary injunction hearing, however, Washington County conceded that contrary to the Chairman's letter, a home rule resolution relating to this legislation was never passed. [2]

To voice their objection to what they perceived as the unconstitutional enactment of Chapter 682, the Property Owners petitioned the Counties for a "Redress of Grievances," as provided for in the First Amendment. It appears as though those Petitions for Redress of Grievances were in the form of letters written by Plaintiff Schulz in February 2003, in addition to public statements he made around that time before the Board of Supervisors of Washington County. See Exhibits H, I (Dkt. No. 1). Having received no response to their Petition for Redress of Grievances, the Property Owners decided to place their real property taxes into a trust account until their concerns relating to the unconstitutionality of Chapter 682 was resolved, rather than paying their taxes directly to the Counties as they came due.

For failing to pay their taxes, the Property Owners have had their names added to a list of delinquent real property taxpayers in Warren and Washington Counties. According to the affidavit of Shelly Van Nostrand, a Legal Assistant in the Warren County Attorney's Office, Plaintiff Schulz is the only one who appears to be a delinquent taxpayer in Warren County. Van Nostrand Aff. (Dkt No. 10). According to the affidavit of Washington County Treasurer, Phyllis Cooper, all of the Plaintiff Property Owners are delinquent in taxes on their respective properties owned in Washington County. Cooper Aff. (Dkt. No. 8) at ¶ 2. On September 8, 2004, the Property Owners received notice from Washington County that their names would be added

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[2] Although, the Counties did not concede that the special act itself was unconstitutional.

to the public list of delinquent taxpayers on November 1, 2004 if they did not remit the taxes due. Id. At ¶ 3. When payment was not received, their names were added to that list on or about November 15, 2004. Id at ¶ 4. Washington County has further informed the Court that if the taxes remain unpaid, on or about June 27, 2005, notice concerning the petitions of foreclosure will be sent to the taxpayers, and as of October 1, 2005, additional penalties will be assessed, and the County will file those petitions of foreclosure.

The Property Owners bring the present action in federal court because they claim that the actions that the Counties have taken against them for their failure to pay their property taxes are retaliation for them voicing their opinions that Chapter 682 was passed in violation of the New York State Constitution. This retaliation, they claim, violates their First and Fourteenth Amendment rights.

The Counties respond that the actions which they have taken are not in retaliation for the Property Owners' voicing their opposition in the Petitions for Redress of Grievances, but rather that these actions were taken in accordance with the mandates of New York's Real Property Tax Law. Specifically, New York Real Property Tax Law § 1122 requires Counties to place delinquent real property taxpayers on a publicly published list.

II. DISCUSSION

(a) Subject Matter Jurisdiction

Plaintiffs contend that jurisdiction is proper because there is a federal question based on the First Amendment retaliation claim. Defendants assert, however, that this Court lacks subject matter jurisdiction pursuant to the Tax Injunction Act, 28 U.S.C. § 1341, which reads:

> The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State.

See Smith v. N.Y. State Dep't. of Taxation and Fin., 79 Fed. Appx. 497 (2d Cir. 2003) (holding that the opportunity to bring suit pursuant to § 1983 in state court, as well as New York's declaratory judgment actions, provide plain, speedy and efficient remedies that require dismissal under § 1341) (unpublished); see also Schulz v. Washington County Board of Supervisors 1998 U.S. Dist. LEXIS 22299 (N.D.N.Y. 1998) (raising issue of jurisdiction under Tax Injunction Act sua sponte to hold that action is dismissed) (Scullin, J).

It is clear that federal courts retain subject matter jurisdiction in those cases involving state tax schemes where state remedies are inadequate. See Kraebel v. N.Y.C. Dept. of Hous. Pres. And Devl, 959 F.2d 395, 400 (2d Cir. 1992). Remedies are inadequate where they are not "plain, speedy and efficient," as explained in § 1341, or if they are incomplete. Id. (citing to Fair Assessment in re A1 Estate Ass'n v. McNary, 454 U.S. 100, 116 (1981)).

The Counties explain that the relief the Property Owners seek is to suspend and restrain the Counties' assessment of taxes. By its terms, § 1341 deprives this Court of subject matter jurisdiction over such an action. Moreover, the Property Owners, specifically Plaintiff Schulz, have brought several actions in state court regarding the constitutionality of Chapter 682, all of which have been dismissed by the courts. There was ample opportunity to bring all of their claims in state court, and they cannot now proceed in federal court.

The Property Owners insist, however, that New York State Finance Law ("SFL") 123-b.1 and the doctrine of laches has precluded the New York state courts from adjudicating the merits of their claims, such as there is no "plain, speedy and efficient" resolution.[3] Therefore, they assert that because the

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[3] New York State Finance Law 123-b.1 reads:

Notwithstanding any inconsistent provision of law, any person, who is a citizen taxpayer...may maintain an action for equitable or declaratory relief, or both, against an officer or employee of the state who in the course of his or her duties has caused, is now causing, or is

state courts do not offer them complete relief, the Tax Injunction Act does not bar their federal complaint. This position is without merit.

The state courts have considered several suits on the issue of the constitutionality of Chapter 682. In Congdon v. Washington County, 130 A.D.2d 27 (N.Y. App. Div. 1987), in addition to holding that the construction of the waste disposal facility did not violate several environmental regulations, the Third Department also notably held that the Counties' obligations to pay the IDA bonds did not violate General Municipal Law § 870 nor New York Constitution, art VIII, § 1.

In a 1992 suit, Schulz v. State of New York, 198 A.D.2d 554, 555 (N.Y. App. Div. 1993) ("Schulz 1992"), citizens, led by Plaintiff Schulz, similarly challenged the financing arrangements of the resource recovery facility. Initially, the tipping fees paid by the garbage haulers were insufficient to cover the waste disposal fees, such that Washington and Warren Counties had to pay portions of the monthly fees from other resources. The State Legislature appropriated $350,000 to the facility to assist the Counties with these payments. In Schulz 1992, the citizens alleged that the $350,000 that was paid by the State to the Counties violated several provisions of the New York Constitution "in that it constituted State aid to a private undertaking and was an assumption by the State of the IDA's debt obligations." The Third Department specifically held that, assuming there was standing for the citizens to bring the action, the court was "nevertheless...of the view that the financing arrangements at issue [t]here do not violate the cited constitutional and statutory provisions." Id. At 556-57.

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about to cause a wrongful expenditure, misappropriation, misapplication, or any other illegal or unconstitutional disbursement of state funds or state property, except that the provisions of this subdivision shall not apply to the authorization, sale, execution or delivery of a bond issue or notes issued in anticipation thereof by the state or any agency, instrumentality or subdivision thereof or by any public corporation or public benefit corporation.

Citizens, again led by Plaintiff Schulz, initiated another suit in 1998, specifically raising the claim that Chapter 682 is unconstitutional. In Schulz v. New York State Legislature, 278 A.D.2d 710 (N.Y. App. Div. 2000) ("Schulz 1998"), the Third Department explained:

> [P]etitioners' first claim challenges the constitutionality of Chapter 682 which authorized Washington County and IDA to enter financing management contracts for a solid waste/resource recovery facility. Clearly, petitioners should and could have raised-and in fact, in part, did raise-this constitutional challenge to the enabling legislation in Matter of Schulz v. State of New York, 198 A.D.2d 554, in which they challenged the constitutionality, inter alia, of the Counties' actions, the financing arrangements authorized by Chapter 682 as well as Chapter 682 itself (see, id.), petitioners are precluded by principles of res judicata and collateral estoppel from raising challenges in the present action/proceeding premised upon new legal theories or arising from or directed at Chapter 682, which was necessarily part of the series of transactions and foundation facts in the prior litigation.... Moreover, petitioners' 1998 [present] request for a declaration that Chapter 682-enacted in 1985-is unconstitutional is untimely..., and is barred on the ground of laches as well, as Supreme Court so held...
> Id. At 712-13.

The Third Department, however, did find that challenges to financing agreements arranged to pay the IDA's debt obligations that were entered into by the Counties in 1998 were not dismissed under res judicata or collateral estoppel grounds. The court recognized that because these arrangements were not made until 1998, citizens could not have raised their objections to them in Schulz 1992. Id. At 714. Later, in Schulz v. New York State Legislature, 5 A.D.3d 885 (N.Y. App. Div. 2004), the Third Department affirmed the Supreme Court's decision which rejected those remaining claims that the 1998 financing arrangements violated the New York Constitution.

Based upon this review of the actions that Plaintiff Schulz has initiated, the state courts provided a forum that offered a "plain, speedy and efficient remedy."[4] It is clear from their language that the court considered the constitutionality of Chapter 682 in Schulz 1992 and did not dismiss the action solely on procedural grounds. Considering that the state courts considered the merits of the constitutional claims, there was remedy-albeit not the one that the Property Owners had hoped. Moreover, when citizens attempted to raise similar constitutional issues in Schulz 1998, the Court specifically explained that the Property Owners could have raised their new constitutional objection to Chapter 682 in prior actions. The Third Department therefore deemed new constitutional claims to be barred by collateral estoppel, res judicata, and laches, a doctrine used when the plaintiff has delayed in initiating his action. If this Court now held that there was no "speedy and efficient" remedy, such a decision would be in direct contravention of the state courts that held that it was the Property Owners who delayed in bringing their action. This Court does not sit as an appellate body for those state court decisions.

The state tribunals provided a plain, speedy, and efficient remedy. Therefore, pursuant to the Tax Injunction Act,

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[4] The Counties urged during the hearing that for purposes of the Tax Injunction Act there needs to be only be a plain, speedy and efficient remedy for the Property Owners to challenge the assessment of the property tax and penalties in state court as they relate to the retaliation claim, but that there need not be a plain, speedy and efficient remedy offered by state courts with respect to determining whether Chapter 682 is constitutional under the New York Constitution. Even under this interpretation, it would be held that a remedy is available in state court because there is little question that a First Amendment retaliation claim may be properly brought in the state courts. See, e.g., Garrity v. Univ. at Albany, 301 A.D.2d 1015 (N.Y. App. Div. 2003) (remanding to Supreme Court for determination of whether university employees' termination violated his First Amendment rights). However, this position may simplify the Tax Injunction Act and the instant action too much.

this Court has no subject matter jurisdiction and the action must be dismissed.[5]

III. CONCLUSION

In accordance with the above, it is hereby

ORDERED, that the action **DISMISSED** in its entirety, and it is further

ORDERED, that the Clerk serve a copy of this order on all parties.

Date: December 14, 2004
Albany, New York

/S/ Lawrence E. Kahn
Lawrence E. Kahn
U.S. District Judge

[5] Although this matter is dismissed, the Court recognizes the Property Owners' frustration with their effort to challenge the enactment of Chapter 682. However, even if the Court had subject matter jurisdiction and was able to address their First Amendment retaliation claim, the state constitutional issues would not be before this Court, having already been litigated in the state courts.

2458 Ridge Road
Queensbury, NY 12804

February 16, 2003

Mr. John D. Aspland
Supervisor
Town of Fort Ann, NY

Re: Dirty Hands and the Trash Plant

Dear Mr. Aspland:

My purpose here is threefold:

1. to put into your hands the evidence of fraudulent acts, including the filing of false instruments and security fraud, by high ranking public officials that put the taxpayers of the County on the hook for hundreds of millions of dollars in bond payments and operating costs related to the trash plant. That evidence is attached.

2. to urge you to consider the strength of this evidence: it begs for a vote by the County Board of Supervisors to walk away from the trash plant contracts; it enables the Board to immediately take the taxpayers of two counties off the $6 million per year hook they are now on; it enables the Board to do so without fear of any adverse consequences.

3. to urge you not to dirty your hands, which is what you would be doing if you attempted to cover up this evidence by ignoring it, by not immediately calling for an investigation and by voting to keep the taxpayers on the hook for bond payments and operating costs related to the trash plant.

As a member of the Washington County Board of Supervisors faced with the "choice of continuing to live under the present oppressive arrangement, taking their chances in court, or working out a slightly better arrangement," I urge you in the

strongest possible terms to consider the evidence of fraudulent behavior that has now been put into your hands, consider whether you want to be considered part of the problem, consider the taxpayers, and then do the right thing -- walk away from the contracts.

Very truly yours,

/S/
Robert L. Schulz

Encl: Chapter 682 of the Laws of 1985
Letter from Joseph Rota urging Governor Cuomo to sign what became Ch 682 of 1985
Letter to Attorney William Nikas from Neil Kelleher's office
Affidavit by Peter Telesky, Chairman, Washington CountyBoard of Supervisors, 1998
Affidavit by Harry Booth, Chairman, Washington County Board of Supervisors, 1992
"Evidence of Fraudulent Behavior" by Robert Schulz, dated Feb 16, 2003

Appendix E-2

EVIDENCE OF FRAUDULENT BEHAVIOR THAT PUT THE TAXPAYERS OF WASHINGTON (AND WARREN) COUNTY ON THE HOOK FOR HUNDREDS OF MILLIONS OF DOLLARS IN BOND PAYMENTS AND OPERATING COSTS RELATED TO THE HUDSON FALLS TRASH PLANT.

Prepared
By

Robert L. Schulz
2458 Ridge Rd
Queensbury, NY 12804
518-656-3578
Bob@givemeliberty.org

February 16, 2003

Joseph Rota

Attached is a letter to Governor Cuomo's office from Joseph Rota, dated June 28, 1985.

The letter is on the stationery of the Washington County Board of Supervisors and was signed by Rota in his capacity as Chairman of the Board.

In the letter Rota urges the Governor to sign A. 937/S. 755 because the Washington County Board of Supervisors "unanimously approved" it and is in "full support." The Governor did sign the bill and it became Chapter 682 of the NY laws of 1985.

The letter puts Chapter 682 of the NY laws of 1985 in Rota's hands.

William Nikas

Attached is a letter to William Nikas from David Little, counsel to Assemblyman Neil Kelleher, dated April 22, 1985.

The letter is addressed to William Nikas, Esq., at the office of attorney Nikas' law office. At the time, Nikas was an attorney, a town supervisor and the chairman of the Solid Waste committee of the Washington County Board of Supervisors.

The letter puts Assembly bill A. 937 in Nikas' hands. Assembly bill A. 937 went on to become Chapter 682 of the NY laws of 1985.

Neil Kelleher

The letter to Nikas and the fact that Assemblyman Neil Kelleher introduced A. 937 to the NY State Assembly for adoption puts Chapter 682 of the NY laws of 1985 in Kelleher's hands.

Ronald Stafford

Senate bill S. 755 was the companion to A. 937. The fact that Senator Ronald Stafford introduced S. 755 to the NY State Senate for adoption puts Chapter 682 of the NY laws of 1985 in Stafford's hands.

Chapter 682

Attached is a copy of Chapter 682 of the NY laws of 1985.

Chapter 682 is a "Special Act" of the legislature, rather than a "General Act," because it affects the property, affairs and government of only the people of Washington County. See NY Constitution Article IX.

The People of the State of NY have prohibited the adoption of Chapter 682 unless the Special Act was preceded by a "Home Rule" resolution – a formal request approved by 2/3 of the total membership of the Washington County Board of Supervisors or a request by its Chairman (Rota) concurred in by a majority of such membership. See NY Constitution Article IX, Section 2.

Chapter 682 was NOT preceded by any Home Rule resolution. The Washington County Board of Supervisors never voted to request such a law. The matter was never on the agenda of the Washington County Board of Supervisors.

Chapter 682 "authorized" the Washington County Board of Supervisors to levy against the taxable real property in the county the cost of the bonds to be issued by the local IDA for the trash plant.

The IDA is a public corporation.

The People of the State of NY have prohibited the Washington County Board of Supervisors from levying the cost of any IDA bonds against the taxable real property in the county. See NY Constitution, Article VIII, Section 1.

Dirty Hands

Joseph Rota's hands are "dirty." He knew his Board never voted to request A.937/S.755and the matter had never been on the Board's agenda, but in order to get the Governor to sign the bill into law he led the Governor to believe that the Board voted unanimously to approve it.

The hands of Neil Kelleher, Ronald Stafford and William Nikas are also dirty. They knew or should have known that A. 937/S. 755 was a Special Act, requiring a Home Rule resolution by the Washington County Board of Supervisors and that there was no Home Rule resolution requesting the Act.

Nikas knew or should have known about Rota's letter to the Governor's office.

Washington County Admissions

On July 15, 1998, Peter Telesky, the Chairman of the Washington County Board of Supervisors admitted that Chapter 682 was passed without a local home rule message or a message of necessity by the Governor. See pages 1, 5, 6, 11and 12 Verified Answer and Verification by Peter Telesky (attached).

On August 25, 1992, Harry Booth, the Chairman of the Washington County Board of Supervisors admitted that it was in keeping with the express authority of Chapter 682 of the laws of 1985 that the County decided to enter into a long-term agreement with the IDA in 1988, and to levy the County's share of the cost of the bonds for the trash plant and the operating costs of the trash plant against the taxable real property in the county. See pages 1, 7 and 8 of affidavit by Harry Booth (attached).

WASHINGTON COUNTY-DISPOSAL OF SOLID WASTE

CHAPTER 682

Approved Aug. 1, 1985, effective as provided in section 2

AN ACT authorizing the county of Washington to enter into a contract for the processing or disposal of solid waste with the counties of Warren and Washington industrial development agency

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Notwithstanding the provisions of any other law, general, special or local, relating to the length, duration and terms of contracts, the county of Washington may enter into a contract or contracts with the counties of Warren and Washington industrial development agency upon such terms and conditions as may be agreed upon for the operation, financing or maintenance of a solid waste management resource recovery facility for the processing or disposal of solid waste, or for a system of collection and disposal of municipal solid waste, for a period not to exceed twenty-five years. The share of the cost to be paid by the county of Washington shall be determined in any manner which may be agreed upon, and such share shall be included in the annual budget of such county as an expense and levied against the taxable real property in such county.

§ 2. This act shall take effect immediately; provided, however, that if the counties of Warren and Washington industrial development agency shall not have commenced construction of a solid waste disposal facility other than a transfer or compacting facility in the county of Washington by January first, nineteen hundred eighty-seven, the provisions of this act shall expire and be of no further force and effect and any local laws adopted or amended pursuant to this act shall be null and void.

THE ASSEMBLY
STATE OF NEW YORK
ALBANY

NEIL W. KELLEHER
100TH DISTRICT
Washington and Rensselaer Counties

CHAIRMAN
Minority Conference

Reply to:
Legislative Office Bldg.
Room 320
Albany, New York 12248
(518)455-5777

DISTRICT OFFICES
Community Center
4 Academy Street
Greenwich, New York 12834
(518) 692-9658

Washington County Building
Room 223, Upper Broadway
Ft. Edward, New York 12828
(518) 747-0988

April 22, 1985

William Nikas, Esq.
116 Oak Street
Hudson Falls, N.Y. 12839

Dear Bill:

Enclosed please find the amendments to A. 937, as proposed by the Legislative Commission on Solid Waste.

As we discussed, there are three changes included in the proposal. The first, and most fundamental is that instead of all three counties contracting with the I.D.A., only Washington County would do so. The other two counties would enter into agreements with Washington County to supply the necessary flow of material.

The second change limits the time within the legislation will be in effect to two years from last January 1. This is the effective date of the flow control legislation. As the flow control legislation expires two years from last January if construction is not started, this amendment should not pose any added burden.

The third change makes the bill effective upon enactment, rather than retroactive to last January 1. This language would only be significant if a suit is commenced between now and when the bill is passed. Since the agreements will not be signed until the legislation passes, this should not be a problem.

I'll continue to keep you up to date as we progress. If these changes are acceptable, let me know and we'll submit them to the EnCon Committee.

Sincerely,

/S/
David A. Little

WASHINGTON COUNTY
NEW YORK

BOARD OF SUPERVISORS
Fort Edward N.Y. 12828
Tel. (518) 747-7791

Chairman
Joseph T. Rota

Clerk
Malcolm Douglas

June 28, 1985

Hon. Gerald C. Crotty
Executive Chamber
State Capitol
Albany, New York 12224

Dear Mr. Crotty:

Regarding Bill A937-b and S 755-b this Board of Supervisors unanimously approved the concept and is in full support.

The governor's executive approval will directly benefit over 125,000 people in the Essex, Warren and Washington County area.

Thank you for your continued interest and concern.

Very truly yours,

/S/
JOSEPH T. ROTA
Chairman of the Board

JTR:hl

STATE OF NEW YORK
SUPREME COURT – ALBANY COUNTY

ROBERT L. SCHULZ and
JOHN SALVADOR, JR.,

Plaintiffs-Petitioners,

Index No. 3271-98

-against-

RJI No. 0198-ST8883

THE NEW YORK STATE
LEGISLATURE, et al.,

Defendants-Respondents.

VERIFIED ANSWER TO
PLAINTIFFS' VERIFIED COMPLAINT PETITION

Defendants, The Washington County Board of Supervisors, Peter Telesky, Chairman, by their attorneys, Barrett Gravante Carpinello & Stern LLP, as and for an answer to the Verified Complaint Petition (hereinafter "Complaint") of Plaintiffs herein, state as follows:

1. Paragraph 1 of the Complaint is an introductory statement to which no response is required...

26. The original N.Y. Constitution speaks for itself. A determination of the relevancy of any particular part of the original N.Y. Constitution requires a legal conclusion...

30. Chapter 682 of the Laws of 1985 speaks for itself. A determination of the relevancy of any particular section of Chapter 682 requires legal conclusions. However, as to the extent that an answer may be necessary, admits that Chapter 682 was passed without a local Home Rule Message or a message of necessity by the governor.

31. Chapter 682 of the Laws of 1985 speaks for itself...

35. The N.Y. Constitution speaks for itself. A determination of the relevancy of any particular part of the N.Y. Constitution requires a legal conclusion...

Dated: July 13, 1998 **BARRETT GRAVANTE CARPINELLO**

/S/

George F. Carpinello
Jeffrey S. Shelly
100 State Street, Suite 900
Albany, New York 12210
(518) 434-0600

TO: JOHN SALVADOR, JR.
Pro Se
2999 State Route 9L
Lake George, NY 12845
(518) 656-9242

ROBERT L. SCHULZ
Pro Se
2458 Ridge Road
Queensbury, NY 12804
(518) 656-3578

STATE OF NEW YORK
SUPREME COURT COUNTY OF WASHINGTON

In the Matter of the Application of

ROBERT L. SCHULZ, JOHN SALVADOR, JR., GILBERT O. BOEHM, WILLIAM A. GAGE CHARLES M. RAWITZ and JERIS G. FRENCH,

Plaintiffs

For an Order Pursuant to State Finance Law Section 123-b; General Municipal Law Section 51; CPLR Article 3002 and Article 78

AFFIDAVIT NO. 2355D

-against-

THE STATE OF NEW YORK, MARIO M. CUOMO, GOVERNOR; THE LEGISLATURE OF THE STATE OF NEW YORK, RALPH M. MARINO, PRESIDENT OF THE SENATE AND SAUL WEPRIN, SPEAKER OF THE ASSEMBLY; THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, THOMAS JORLING, COMMISSIONER; WASHINGTON COUNTY, R. HARRY BOOTH, CHAIRMAN; WARREN COUNTY, VICTOR R. GRANT, CHAIRMAN; THE WARREN AND WASHINGTON COUNTIES INDUSTRIAL DEVELOPMENT AGENCY, GEORGE E. ALLEN, CHAIRMAN; ADIRONDACK RESOSURCE RECOVERY ASSOCIATES; THOMAS M. LAWSON; JAMES C. TOMASI; RONALD B. STAFFORD; NEIL W. KELLEHER; GLENN R. JONES; WILLIAM J. WALSH; ROBERT S. BANKS; R. HARRY BOOTH; WILLIAM T. SHERIDAN; DANIEL H. HAYES; ROY E. ESIASON; MICHAEL KARP; BENJAMIN G. JONES; WILLARD AUBREY; ARCH CRAIG; ROBERT J. CORRIGAN; JOHN R. LAPOINTE; BRUCE A. FERGUSON; DOUGLAS G. ROCQUE; FRANK J. DAGLES; FREDERICK H. MONROE; ANTHONY SCOTT; MARY BETH CASEY; MICHAEL J. O'CONNOR; EDWARD J. MURPHY; DANIEL D. BELDEN; JEAN A. OLSON; WILLIAM H. THOMAS; LOUIS E. TESSIER; VICTOR R. GRANT; MICHEL R. BRANDT;

WILLIAM H. BARTON; LLOYD H. DEMBOSKI; ELIZABETH O'C. LITTLE; C. POWER SOUTH; JOHN T. O'NEILL; EDWIN J. BAKER; MAYNARD D. BAKER; and BANK OF NEW YORK,

Defendants

STATE OF NEW YORK)
) ss.:
COUNTY OF WASHINGTON)

R. HARRY BOOTH, being duly sworn, deposes and says:

1. I am the Supervisor of the Town of Easton, located in Washington County, State of New York, having served in that capacity for nearly six years. On January 2, 1992, I was elected Chairman of the Washington County Board of Supervisors. As such, I have personal knowledge of the facts alleged herein. OI make this affidavit on behalf of myself and Defendants-Respondents, Washington County, Washington County Supervisors Glenn R. Jones, William J. Walsh, Robert S. Banks, William T. Sheridan, Daniel H. Hayes, Roy E. Esiason, Michael Karp, Benjamin G. Jones, Willard Aubrey, Arch Craig, Robert J. Corrigan, John R. LaPointe, Bruce A. Ferguson and Douglas G. Rocque, Defendant-Respondent Warren and Washington Counties Industrial Development Agency ("IDA"), Defendant-Respondent Adirondack Resource Recovery Associates ("ARRA") and Defendant-Respondent James C. Tomasi. I make this affidavit in support of Defendants-Respondents' motion for summary judgment.

NATURE OF THIS PROCEEDING

2. In this proceeding, the Plaintiffs are challenging as unlawful Washington County's payment of a monthly waste disposal fee under a Waste Disposal Contract it has entered into with the Warren and Washington Counties Industrial Development Agency ("IDA"). Specifically, Plaintiffs allege five causes of action against Washington County and its individual supervisors as follows:

1) Washington County's payment of the waste disposal fee out of taxpayer funds constitutes aiding a private undertaking (ARRA), in violation of the New York State Constitution, Article VIII, §1.

2) Washington County's agreement to pay the waste disposal fee out of taxpayer funds amounts ot its having contracted indebtedness without having pledged its faith and credit, in violation of the New York State Constitution, Article VIII, §2.

3) Washington County's payment of the waste disposal fee is an assumption of the debt liability of the IDA, in violation of General Municipal Law, §870. Amended and Restated Waste Disposal Contract between the IDA and Washington County.

4) Washington County's payment of the waste disposal fee constitutes a taking of property without due process, in violation of the New York State Constitution, Article I, §1, and the U.S. Constitution, Amendments V and XIV.

5) Washington County's payment of the waste disposal fee denies Plaintiffs' right to equal protection of the laws, in violation of the New York State Constitution, Article I, §11.

(A copy of Chapter 682 of the Laws of 1985 is annexed hereto and made a part hereof as Exhibit "A".)...

6. That the waste disposal fee is being paid out of taxpayer funds is completely in keeping with the express authority of Chapter 682 of the Laws of 1985. Chapter 682 authorized Washington County to enter into a long term waste disposal contract and to pay its share of the cost out of real property taxes. See Exhibit "G" annexed hereto...

WHEREFORE, Defendant-Respondent Washington County respectfully requests this Court to grant the motion for summary judgment sought by the Defendants-Respondents.

/S/

R. HARRY BOOTH

Sworn to before me this
25th day of August, 1992.

/S/

Notary Public

Mary E. Sherman
Notary Public, State of New York
Residing in Washington County
My Commission Expires March 30, 1993

Appendix F

STATEMENT BY BOB SCHULZ
TO
THE BOARD OF SUPERVISORS, WASHINGTON COUNTY, NEW YORK

August 15, 2003

It is with a heavy heart that I inform you that for the next four months I will be encouraging the citizens of Washington and Warren Counties not to pay their town and county property taxes, which would normally be due in January but, instead, to put their money into an escrow account, there to remain until the Boards of Supervisors either agree to stop using taxpayer funds to pay the debt of the Hudson Falls trash plant or until they respond to the Petition for Redress of Grievances regarding the official corruption and fraud associated with the project.

As you know, each member of this Board was served with a copy of the Petition for Redress in February. As you know, the Petition put into your hands the evidence of fraudulent acts, including the filing of false documents and security fraud by high ranking public officials who ILLEGALLY put the property tax payers of the county on the hook for hundreds of millions of dollars. Since 1992 you, and your predecessors have been bilking the property owners of the County. As you know, you were informed that that evidence enabled you to immediately take the taxpayers off hook and to do so without fear of any adverse consequences. You were urged not to dirty your hands by continuing to cover up the evidence of the fraud.

A copy of the Petition for Redress, with the supporting evidence is attached.

To date, you have chosen to ignore the Petition for Redress. We have also petitioned the court. They, too, have ignored the issue.

The Right to Petition for a Redress of our Grievances is an unalienable Right, endowed to each individual by the Creator. The Right to Petition may be a forgotten Right, but it is most definitely not a lost Right. The Right to Petition is clearly

guaranteed by the plain language of the New York and federal Constitutions.

The Right to Petition is an Ancient Right. The Right to Petition includes the Right to be Heard by this Board and the Right to an honest answer by this Board. And, the Right to Petition includes the Right of Redress BEFORE taxes.

You don't have to take my word for it. Listen to the words of the founding fathers: "If money is wanted by Rulers who have in any manner oppressed the People, they may retain it until their grievances are redressed, and thus peaceably procure relief, without trusting to despised petitions or disturbing the public tranquility."

These words were included in an official Act of the Continental Congress, passed unanimously and sent to the inhabitants of Quebec as part of an effort to encourage the Canadians to join our Revolution. The eight-page Act is considered by scholars to be an excellent reference for those interested in understanding the intent behind the American Revolution. Men were giving their lives in defense of these beliefs.
A copy of the official Act is attached hereto and made a part of this statement.

For emphasis, I repeat the words: "If money is wanted by Rulers who have in any manner oppressed the People, they may retain it until their grievances are redressed, and thus peaceably procure relief, without trusting to despised petitions or disturbing the public tranquility."

In other words, if the servant government is abusing its power and taking over the house, STARVE THE SERVANT.

Need more proof the original intent of the Right to Petition?

Attached to and made a part of this Statement are copies of ten papers, authored by nine professors of constitutional law and one attorney, all on the subject of the Right to Petition, and all published since 1986 in The Yale University Law Review, the University of Cincinnati Law Review, the Iowa University Law

Review, the Harvard University Law Review, the Northwestern University Law Review, the Fordham University Law Review and the Ohio State University Law Review.

They all agree that the Right is an ancient Right, and that it includes the Right to be Heard by this Board and the Right to an honest answer by this Board. The Right to Petition includes the Right of Redress BEFORE taxes.

I could find no other papers published before or since on the subject of the Right to Petition.

Soon, we will announce the details of the escrow account and the schedule of the dates, times and locations of the meetings where we will present the evidence of the fraudulent origin of the Hudson Falls Trash Plant and answer all questions.

We will ask all of the volunteer fire companies in the two counties to make their firehouses available for the round of meetings.

The schedule will be announced through the local print and broadcast media and on the web sites we have created for Washington County and Warren County which can be accessed at https://givemeliberty.org/user/congress/state.aspx?state=ny.

Make this a part of the Record of this meeting.

Questions? Hearing none,

Thank you.

Appendix F

LAW REVIEW ARTICLES: RIGHT TO PETITION

Submitted to the Washington County Board of Supervisors
on August 15, 2003, as an Attachment to a Statement
by Bob Schulz, a Resident of the Town of Fort Ann

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A SHORT HISTORY OF THE RIGHT TO PETITION GOVERNMENT FOR THE REDRESS OF GRIEVANCES, Stephen A. Higginson, 96 Yale L.J. 142 (November, 1986)	1
"SHALL MAKE NO LAW ABRIDGING . . .": AN ANALYSIS OF THE NEGLECTED, BUT NEARLY ABSOLUTE, RIGHT OF PETITION, Norman B. Smith, 54 U. Cin. L. Rev. 1153 (1986)	2
"LIBELOUS" PETITIONS FOR REDRESS OF GRIEVANCES -- BAD HISTORIOGRAPHY MAKES WORSE LAW, Eric Schnapper, 74 Iowa L. Rev. 303 (January 1989)	3
THE BILL OF RIGHTS AS A CONSTITUTION, Akhil Reed Amar, 100 Yale L.J. 1131 (March, 1991)	4
A PETITION CLAUSE ANALYSIS OF SUITS AGAINST THE GOVERNMENT: IMPLICATIONS FOR RULE 11 SANCTIONS, 106 Harv. L. Rev. 1111 (MARCH, 1993)	5
SOVEREIGN IMMUNITY AND THE RIGHT TO PETITION: TOWARD A FIRST AMENDMENT RIGHT TO PURSUE JUDICIAL CLAIMS AGAINST THE GOVERNMENT, James E. Pfander, 91 Nw. U.L. Rev. 899 (Spring 1997)	6

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THE VESTIGIAL CONSTITUTION: THE HISTORY AND SIGNIFICANCE OF THE RIGHT TO PETITION, Gregory A. Mark, 66 Fordham L. Rev. 2153 (May, 1998) 7

DOWNSIZING THE RIGHT TO PETITION, Gary Lawson and Guy Seidman, 93 Nw. U.L. Rev. 739 (Spring 1999) 8

A RIGHT OF ACCESS TO COURT UNDER THE PETITION CLAUSE OF THE FIRST AMENDMENT: DEFINING THE RIGHT, Carol Rice Andrews, 60 Ohio St. L.J. 557 (1999) 9

MOTIVE RESTRICTIONS ON COURT ACCESS: A FIRST AMENDMENT CHALLENGE, Carol Rice Andrews, 61 Ohio St. L.J. 665 (2000) 10

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ROBERT L. SCHULZ; DIANE LUKARIS; RAYMOND BASSETTE, SR.; KEITH GILLIGAN; BRUCE TURNBULL; LOUIS NAVARRO; and JUDITH PORCARO;

- Plaintiffs

VERIFIED COMPLAINT
Index No. 04-cv-1375
LEK/RFT

- against -

WASHINGTON COUNTY BOARD OF SUPERVISORS; ANDREW J. WILLIAMSON, individually and in his official capacity as Chairman of the Washington County Board of Supervisors; WASHINGTON COUNTY TREASURER'S OFFICE; PHYLLIS COOPER, individually and in her official capacity as Washington county Treasurer; WASHINGTON COUNTY CLERK'S OFFICE; DEBORAH BEAHAN, individually and in her official capacity as Washington County Clerk; WARREN COUNTY BOARD OF SUPERVISORS; WILLIAM H. THOMAS, individually and in his official capacity as Chairman of the Warren County Board of Supervisors; WARREN COUNTY TREASURER'S OFFICE; FRANCIS X. O'KEEFE, individually and in his official Capacity as Warren County Treasurer; WARREN COUNTY CLERK'S OFFICE; and PAMELA VOGEL, individually and in her official capacity as Warren County Clerk,

- Defendants

JURISDICTION

Plaintiffs ROBERT L. SCHULZ; DIANE LUKARIS; RAYMOND BASSETTE, SR.; KEITH GILLIGAN; BRUCE TURNBULL; LOUIS NAVARRO; and JUDITH PORCARO,

citizens of the United States and of New York State, are residents of this judicial district. All Defendants are located in this judicial district. This court has jurisdiction under 28 USC Sections 1331 and 1343(3) and 42 USC Sections 1983. The claims arise under the First, Fifth and 14th Amendments to the U.S. Constitution. This action is timely commenced.

RELIEF REQUESTED

Plaintiffs, pro se, hereby move the Court for an entry of an Order:

a. Granting declaratory relief to the Plaintiffs by constraining the defendants to meet their obligations under the law and relevant rules by entering into good faith exchanges with the Plaintiffs and to provide to the Plaintiffs documented and specific answers to the reasonable questions asked of them by the Plaintiffs and to address in their respective official capacities each of the issues raised by the Plaintiffs in their Petitions to representatives of the Washington and Warren County governments for Redress of Grievances, as is Plaintiffs' Right under the First and Fourteenth Amendments; and

b. Granting a preliminary and temporary injunction against the Washington County Treasurer's Office and the Warren County Treasurer's Office and any other agency of Washington and Warren County that arguably may act in this matter under color of law, from taking any retaliatory actions against the named Plaintiffs in this proceeding, including publicly adding Plaintiffs to a list of delinquent taxpayers, the assessment of financial penalties and interest on and the confiscation of real property, whether such retaliation is for attempting to petition the County Government for Redress of Grievances, for assembling and associating with one another under the umbrella of the We The People Congress, for withholding monies from Defendants, for serving as Plaintiffs in this action or for the exercise of any other rights protected by the Constitutions of the United States and the State of New York; and

c. Retaining jurisdiction to ensure compliance with the Court's decisions; and

d. Expediting these proceedings where this matter might be set for trial; and

e. Granting any other, non-financial relief that the Court may deem proper.

In furtherance of this Motion, the Plaintiffs allege and say:

I. STATEMENT OF THE CLAIM

1. This Complaint arises from the failure of the Defendants to respond to Plaintiffs' First and Fourteenth Amendment Petitions for Redress of Grievances, regarding: a) Defendants' failure to adopt a Home Rule Resolution prior to the adoption of Chapter 682 of the NY Laws of 1985, as mandated by Article IX of the NY Constitution; and b) Defendants' property tax imposed on Plaintiffs under Chapter 682, which tax is repugnant to the Local Finances Article (Art. VIII), and the Corporation Article (Art. X), of the NY Constitution.

2. The instant case arises from the violation of Plaintiffs' First and Fourteenth Amendment Right under the U.S. Constitution to Petition government for Redress of Grievances, by local government officials in the Executive and Legislative branches of Washington and Warren Counties, who are acting under color of State Law. The U.S. Supreme Court made explicit that "the right to petition extends to all departments of the Government," and that "the right of access to the courts is . . . but one aspect of the right of petition." *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 510. The instant case is NOT an appeal from any decision by the New York State courts.

3. This complaint also arises from the Executive and Legislative Branches of the governments of Washington and Warren Counties in their retaliation against individual

Plaintiffs for Petitioning their local government for a Redress of Grievances.

**THE PARTIES
AND OTHER RESPONSIBLE PERSONS
AND INSTITUTIONS**

4. Each Plaintiff is a natural living human being, is over the age of eighteen, and is a real property taxpayer of Washington and/or Warren County, New York.

5. Plaintiffs, per the First and Fourteenth Amendments of the U.S. Constitution (and Article I of the NY Constitution), have exercised their Right to petition the defendants for Redress of Grievances relating to the N.Y. Constitution's home rule, local finances and due process clauses.

6. Plaintiffs, by communicating information, expressing facts and opinions, reciting grievances, protesting abuses and praying for answers to specific questions, have given expression essential to the end that government Defendants are, and must be held responsive and accountable to the Constitutions and to the sovereignty of the People and that Redress and changes to which the People are entitled may be obtained by lawful and peaceful means.

7. The Defendants have not responded to Plaintiffs' repeated and numerous Petitions for Redress of Grievances.

8. Plaintiffs, knowing that a Right that is not enforceable is not a Right and wishing to peaceably enforce his/her individual, unalienable Rights, have given further expression to their Rights as guaranteed by the First and Fourteenth Amendments to the U.S. Constitution (and by Article I of the NY Constitution), to Speech, Assembly and Petition, by not turning over to government Defendants money otherwise due under the Real Property Tax Law of New York State.[2]

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[2] Plaintiffs have placed their property tax money into a Trust Account, there to remain until their Grievances are Redressed. The County Treasurers are named as beneficiaries.

9. Plaintiffs believe that such further expression by them is not an abuse, but an inextricable extension of their First and Fourteenth Amendment Rights and any intervention by Defendants against such expression of these First Amendment Rights constitutes a direct and substantive curtailment of their Rights and is forbidden.

10. Plaintiffs are suffering retaliation at the hands of Defendants for Petitioning Defendants for Redress of Grievances.

11. ROBERT L. SCHULZ resides in Washington County. His mailing address is 2458 Ridge Road, Queensbury, NY 12804. He is the owner of the parcels of real property located in Warren and Washington Counties as shown on Exhibit A, attached hereto.

12. DIANE LUKARIS resides in Warren County. Her mailing address is 12 Jenkins Road, Lake George, NY 12845. She is the owner of the parcels of real property located in Washington County as shown on Exhibit A, attached hereto.

13. RAYMOND BASSETTE, SR. resides in Washington County. His mailing address is 62 Middleton Rd., Granville, NY 12832. He is the owner of the parcels of real property located in Washington County as shown on Exhibit A, attached hereto.

14. KEITH GILLIGAN resides in Washington County. His mailing address is 12 Old Bend Road, Fort Edward, NY 12828. He is the owner of the parcels of real property located in Washington County as shown on Exhibit A, attached hereto.

15. BRUCE TURNBULL resides in Washington County. His mailing address is 1360 Patten Mills Road, Fort Ann, NY 12827. He is the owner of the parcel of real property located in Washington County as shown on Exhibit A, attached hereto.

16. LOUIS NAVARRO resides in Washington County. His mailing address is 1328 Patten Mills Road, Fort Ann, NY 12827. He is the owner of the parcel of real property located in Washington County as shown on Exhibit A, attached hereto.

17. JUDITH PORCARO resides in Washington County. Her mailing address is 5391 State Route 40, Argyle, NY 12809. She is the owner of the parcel of real property located in Washington County as shown on Exhibit A, attached hereto.

18. The WASHINGTON COUNTY BOARD OF SUPERVISORS is the chief Executive and Legislative agency for Washington County, State of New York.

19. ANDREW J. WILLIAMSON, is sued here individually and in his official capacity as Chairman of the Washington County Board of Supervisors.

20. WASHINGTON COUNTY TREASURER'S OFFICE is the department within the government of Washington County that is charged with issuing tax bills for real property, assessing penalties and interest for late payment of real property taxes, collecting real property taxes and for auctioning property seized by the County for non-payment of real property taxes.
PHYLLIS COOPER, is the duly elected Washington County Treasurer.

21. WASHINGTON COUNTY CLERK'S OFFICE is the department within the government of Washington County that is charged with recording deeds and other official documents, including the list of delinquent real property taxpayers. DEBORAH BEHAN is the duly elected County Clerk.

22. The WARREN COUNTY BOARD OF SUPERVISORS is the chief Executive and Legislative agency for Warren County, State of New York. WILLIAM H. THOMAS is the duly elected Chairman of the Warren County Board of Supervisors.

23. Under the purported authority of Chapter 682 of the NY Laws of 1985, Warren County Board of Supervisors has entered into a contract with the Washington County Board of Supervisors, agreeing to impose a tax on Plaintiff's real property to pay certain obligations of the Warren and Washington County Industrial Development Agency.

24. WARREN COUNTY TREASURER'S OFFICE is the department within the government of Warren County that is charged with issuing tax bills for real property, assessing penalties and interest for late payment of real property taxes, collecting real property taxes and for auctioning property seized by the County for non-payment of real property taxes. FRANCIS X. O'KEEFE is the duly elected Warren County Treasurer.

25. WARREN COUNTY CLERK'S OFFICE is the department within the government of Warren County that is charged with recording deeds and other official documents, including the list of delinquent real property taxpayers. PAMELA VOGEL is the duly elected County Clerk.

STATEMENT OF FACTS

26. The New York State Legislature is prohibited by the NY Constitution from passing any law that would affect the people, property and affairs of only Washington County, unless the County Board of Supervisors first adopts a "Home Rule" resolution requesting the State Legislature to adopt such a law.[3]

27. The Washington and Warren County Boards of Supervisors are prohibited by NY Constitution from taxing the real property owners to pay any part of any liability of the Warren and Washington County Industrial Development Agency ("IDA), a public corporation.[4]

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[3] " ... the legislature ... Shall have the power to act in relation to the property, affairs or government of any local government only by special law, or by special law only (a) on request of two-thirds of the total membership of its legislative body or on request of its chief executive officer concurred in by a majority of such membership ...." NY Constitution, Article IX, Section 2(b)(2)

[4] " Neither the state nor any political subdivision thereof shall at any time be liable for the payment of any obligations issued by such a public corporation heretofore or hereafter created, nor may the legislature accept, authorize acceptance of or impose such liability upon the state or any political subdivision thereof." NY Constitution, Article X, Section 5 paragraph 4. "; nor shall any county...give or loan its credit to or in aid of any ... public ... corporation...." NY

28. Any law passed by the state legislature is "abrogated" (set aside) if it is "repugnant" to any provision of the State Constitution. This is even true of laws that are passed by the State legislature at the request of a County Board of Supervisors.[5]

29. In 1984, on New Year's eve, a public corporation, the Warren and Washington Industrial Development Agency, issued $50 million of bonded indebtedness for a garbage burning facility, for the benefit of a private corporation (Falls Energy, Inc.), but with principal of and interest on the debt to be paid by the property taxpayers of Washington and Warren Counties.[6]

30. Washington County was immediately sued, claiming that in violation of General Municipal Law, Section 870 (a statute prohibiting the Counties from paying any part of any debt obligation of the IDA)[7], Washington and Warren Counties were

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Constitution, Article VIII, Section 1, cl 2. "No county ... shall give or loan any money or property to or in aid of any ...private corporation or association, or private undertaking...." NY Constitution, Article VIII, Section 1, cl 1.

[5] "But all such parts of the common law, and such of said acts ...as are repugnant to this constitution, are hereby abrogated. NY Constitution, Section 14.

[6] There was a rush to have a bond closing before midnight on December 31, 1984. On January 1, 1985, the federal arbitrage laws changed. Prior to January 1, 1985, the IDA could issue bonds at one interest rate and invest the proceeds at a higher interest rate, for any length of time, and not be accountable for the difference. As of January 1, 1985, the IDA would only be able borrow at one interest rate and invest the proceeds at a higher interest rate, if the project was "close at hand." In December of 1984, the IDA's waste to energy project was not "close at hand." It took many years before contracts were in hand. Construction did not start until 1989. The project did not begin operations until 1992.

[7] "The bonds or notes and other obligations of the authority shall not be a debt of the state or of the municipality, and neither the State nor the municipality shall be liable thereon, nor shall they be payable out of any funds other than those of the agency." NYS General Municipal Law, Article 18-A, Section 870.

prepared to use their real property tax money to enable the IDA to pay the principle of and the interest on the bonds of the IDA.[8]

31. However, in 1985, while *Congdon* was pending before Washington County State Supreme Court Judge Thomas Mercure, and in an obvious attempt to cure the statutory GML 870 problem (but apparently without an appreciation that GML 870 was in harmony with NY Constitution Articles X and VIII) the principals of Falls Energy surreptitiously approached certain local and state elected officials with a request to steer a *Special Act* through the State Legislature and the Governor's office, to provide an exception to GML 870, but to do so under a cover of stealth – that is, without seeking the home rule resolution from the Washington County Board of Supervisors mandated by NY Const. Article IX , without having it raised or presented at any regular or special meeting of the County Board of Supervisors, without first bringing the bill to the attention of the general public, and without bringing the *special act* to the attention of the general public after the governor signed the bill into law.

32. The principals of the Falls Energy company, conspiring with two members of the Washington County Board of Supervisors, drafted a *special act* to be passed by the State Legislature to exempt the project from General Municipal Law Section 870, by "authorizing" the property tax to be used to pay for the financing of the project. However, the prohibition in GML 870 is in keeping with the prohibition in the Corporations Article of the NY Constitution (Article X, Section 5, paragraph 4)[9], and the Local Finances Article of the NY Constitution (Article VIII, Section 1).[10]

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[8] Congdon v. Washington County, 130 AD2d 27, lv denied 70 NY2d 610.

[9] " Neither the state nor any political subdivision thereof shall at any time be liable for the payment of any obligations issued by such a public corporation heretofore or hereafter created, nor may the legislature accept, authorize acceptance of or impose such liability upon the state or any political subdivision thereof." NY Constitution, Article X, Section 5 paragraph 4.

[10] "...; nor shall any county...give or loan its credit to or in aid of any ... public ... corporation...." NY Constitution, Article VIII, Section 1.

33. The elected officials who were approached were William Nikas (a lawyer from Hudson Falls, who at the time was the Town Supervisor and Chairman of the Solid Waste Committee of the Washington County Board of Supervisors), Joseph Rota (who at the time was the Chairman of the Washington County Board of Supervisors), Ronald Stafford (another lawyer, who at the time was the area's State Senator) and Neil Kelleher (who at the time was the area's State Assemblyman).

34. In April of 1985, Nikas negotiated the language of Assembly Bill A. 937 and Senate Bill S. 755 (the proposed *Special Law*) with the staffs of Kelleher and Stafford, who eventually introduced the bill to the Assembly and Senate for quick and quiet passage as a Home Rule, *special act,* but without the home rule request from the Washington County Board of Supervisors mandated by NY Constitution, Article IX Section 2 b (2). See Exhibit B, which is a copy of a letter from Kelleher's staff attorney to Nikas.

35. In June of 1985, without the home rule request/resolution from the Washington County Board of Supervisors mandated by NY Const. Article IX, Section 2 (b) (2), and in spite of the constitutional prohibitions of Articles X and VIII, the bills were passed by the Assembly and the Senate and sent to the Governor for his action.

36. On June 28, 1985, Chairman Rota wrote to Gerald Crotty, the Governor's Secretary, requesting that the Governor sign the bills into law, saying, FRAUDULENTLY, that the Washington County Board of Supervisors had "unanimously approved" it and were "in full support." Exhibit C is a copy of Rota's letter to Crotty.

37. Rota lied to the Governor's office. The Washington County attorney and the 1998 Chairman of the Board of Supervisors, Peter Telesky, have CONCEDED the material fact that the *Special Law*, Chapter 682 of the Laws of 1985, was not preceded by the home rule resolution required by the Article IX, Section 2 b (2) of the Constitution and the Home Rule Law. See Exhibit D, which is a copy of selected pages from a Verified Answer prepared by Washington County Attorney George

Carpinello and verified on June 15, 1998 by the Chairman of the Washington County Board of Supervisors, Peter Telesky, in response to yet another lawsuit (in which the NY State Supreme Court did not address the merits of the underlying claim).

38. In 1985, other than Nikas and Rota, the members of the Washington County Board of Supervisors were not aware of the fact that Nikas, Rota, Stafford and Kelleher were getting the *Special Law* adopted. In fact, the subject never came up at any meeting of the Board of Supervisors. In fact, the Washington County Board of Supervisors never voted to request such an Act. Again, see Exhibit C

39. The Governor signed the bill into law as Chapter 682 L85, a *Special Law*, affecting the property, affairs and government of only Washington County, by authorizing the County to levy the cost of FINANCING the Hudson Falls trash plant against the taxable real property. In other words, the *special act* "authorized" the government of Washington County to accept liability for the payment of obligations to be issued by the IDA, a public corporation, in violation of NY Constitution, Article X, Section 5 paragraph 4 AND Article VIII, Section 1, ALL WITHOUT A REQUEST BY THE LOCAL GOVERNMENT AS MANDATED BY ARTICLE IX, and it was all based on a conspiracy of silence and the filing by Chairman Joseph Rota of a false instrument to the governor's office.

40. After the "adoption" of the *Special Act*, *Congdon* was finally dismissed by Judge Mercure, but with no reference to Chapter 682 of the Laws of 1985 or the State's Home Rule Law. There was no evidence yet of an actual violation of GML 807, i.e., the Counties were not yet giving any property tax money to the IDA to enable the IDA to pay the principle of and the interest on the bonds of the IDA. See Congdon v. Washington County, 130 AD2d 27, lv denied 70 NY2d 610.

41. For seven years, Chapter 682 was not revealed to Plaintiffs, the citizens of Washington County or to their local and county elected officials and was known only to a certain few. It was purposely kept from public knowledge.

42. Finally, in August of 1992, knowledge of the passage of Chapter 682 became known. With the plant finally up and running and the first payments due on the cost of FINANCING the project, the Counties began dipping into their property tax revenues, to make payments to the IDA to enable the IDA to meet its obligations to cover the cost of FINANCING the project.[11]

43. Again the counties were sued, and again the courts refused to reach the merits of the case.

44. The case was assigned to Washington County State Supreme Court Judge John Dier.

45. On August 25, 1992, Harry Booth, the Chairman of the Washington County Board of Supervisors filed a sworn affidavit with the court, saying use of the property tax to pay the cost of financing the IDA project had been authorized by the state legislature with the passage of a Chapter 682 in 1985. This was the first public disclosure to the taxpayers and citizens of the counties and the first the plaintiffs knew about Chapter 682 of the Laws of 1985. See Exhibit E hereto, which is a copy of selected pages from Mr. Booth's sworn affidavit in Matter of Schulz v State of New York, 198 AD2d 554 (AD 66196), lv denied 83 NY2d 756.

46. Plaintiffs immediately responded to Mr. Booth's affidavit in two affidavits to the trial court (Dier, J.). Plaintiffs argued that Chapter 682 was abrogated, null and void because it was fraudulently adopted without the requisite Home Rule message by the Washington County Board of Supervisors. Plaintiffs also argued that Chapter 682 was unconstitutional and should be set aside because it was repugnant to certain prohibitions of Article X and Article VIII.

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[11] The counties have been doing so ever since. Without a court order, the counties are expected to continue doing so for another seven years. Approximately $200 million is coming from the property taxes of Washington and Warren Counties to pay the obligations of the IDA for the Project.

47. However, on October 13, 1992, Judge Dier dismissed the case without explanation. There was no Memorandum attached to the order dismissing the complaint. The court utterly failed in its responsibility to explain why it was dismissing all claims raised and presented to the court, including plaintiffs' Home Rule Article IX question.

48. On appeal, plaintiffs argued that Chapter 682 -- the trash plant project's "enabling legislation" – was unconstitutional, fraudulently adopted and passed in violation of the State's Home Rule Law. However, in a decision that further undermined the integrity of the NY judiciary, the Appellate Division of State Supreme Court sidestepped plaintiffs' evidence of the fraudulent adoption of the *special act* (Chapter 682) and plaintiffs' Home Rule, Article IX, constitutional challenge to Chapter 682. The Appellate Division arbitrarily and capriciously failed to address plaintiffs' Article IX question. Therefore, the claim was not litigated. The issue was NOT brought to conclusion. The decision did not encompass the question. See Matter of Schulz v State of New York, 198 AD2d 554, lv denied 83 NY2d 756.

49. To repeat, plaintiffs' constitutional tort claim under Article IX, while clearly raised, was not brought to a conclusion. Materially, it was ignored, first by Judge Dier and then by the Appellate Division. Plaintiffs were denied a full and fair opportunity to have the claim litigated.

50. In 1998, property taxpayers, including Plaintiff Schulz had cause to sue the Counties again for further acts in relation to the project in spite of various constitutional prohibitions. Plaintiffs took the opportunity to again present the Home Rule, constitutional tort claim that was raised in the earlier case -- but not brought to a conclusion – that is, Chapter 682's repugnancy to Article IX, Section 2(b)(2).

51. In their Verified Answer to the Complaint, a County Attorney and the Chairman of the Board of Supervisors, Peter Telesky, **CONCEDED** that Chapter 682 was adopted without the request/resolution mandated by Article IX, Section 2 (b) (2). See Exhibit C hereto.

52. However, ignoring the County's admission of its failure to obtain a home rule request/resolution (and the evidence of the FRAUD involved in the adoption of Chapter 682), the New York courts again refused to reach the merits of the constitutional challenge to Chapter 682 and to the use of the property tax to pay the debt of the IDA's project.[12]

53. On numerous occasions Plaintiffs have respectfully Petitioned the Executive and Legislative branches of the two Counties, sought to publicly meet with the Defendants and to secure from the Defendants answers to reasonable questions regarding certain acts of Defendants believed by Plaintiffs to be repugnant to and outside the authority lawfully granted by the N.Y. Constitution.

54. Plaintiffs' **First Amendment** Petitions for Redress of Grievances have included respectfully drawn requests for answers to questions regarding Defendants' overt acts related to the Home Rule clauses of the N.Y. Constitution and Chapter 682-- questions designed to assist Plaintiffs in their quest to determine their *bona fide* Rights and *bona fide* legal obligations under those laws, policies and programs as enforced by the Defendants.

55. The Defendants have steadfastly refused to properly respond to Plaintiffs' proper **First Amendment** Petitions for Redress of grievances and oppressions.

56. The following paragraphs provide a detailed account of attempts by Plaintiffs to Petition the Executive and Legislative branches of their County government for Redress of Grievances and the government's failure to respond, except by retaliation, by publicly characterizing Plaintiffs as "Delinquents," and through financial penalties and threats of confiscation of Plaintiffs' real property.[13]

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[12] Schulz v NYS Legislature, et al., 278 AD2d 710, app dismissed, ___NY 2d ___, mot lv denied __NY2d __.

[13] In November, 2004, Defendants published a list of "Delinquent taxpayers," recording the parcels and the names of the Plaintiff-

57. On or about February 13, 2003, pursuant to the **First Amendment**, Plaintiff Schulz directly Petitioned the Executive and Legislative branches of the government of Washington County (and indirectly, the Executive and Legislative branches of the government of Warren County), for Redress of Grievances regarding the unconstitutional and fraudulent adoption of Chapter 682 of the New York laws of 1985. The prayer for relief was that the Counties stop using property tax revenues to pay the obligations of the IDA related to the Hudson Falls Trash Plant project. Schulz specifically requested that the Board, "[T]ell me why I should not ask the property owners of this county to retain and hold onto their property taxes until the County agrees to walk away from this project." **There was no response to the February 13, 2003 Petition for Redress**. See Exhibit F annexed hereto.

58. On February 19, 2003, Schulz Petitioned his town supervisor, John Asplund, for Redress of Grievances regarding the unconstitutional and fraudulent adoption of Chapter 682 of the New York laws of 1985. The prayer for relief was that Mr. Asplund immediately call for an investigation of the issue and stop using property tax revenues to pay the obligations of the IDA related to the Hudson Falls Trash Plant project. Schulz specifically requested that Asplund, "[C]onsider the evidence of fraudulent behavior...and then do the right thing--walk away from the [IDA] contracts." **There was no response to the February 19, 2003 Petition for Redress**. See Exhibit G annexed hereto.

59. On February 20, 2003, pursuant to the **First Amendment**, Schulz petitioned each member of the Washington County Board of Supervisors for Redress of Grievances regarding the unconstitutional and fraudulent adoption of Chapter 682 of the New York laws of 1985. The prayer for relief was that each recipient of the letter immediately call for an investigation of the issue and stop using property tax revenues to

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property owners on the list in the Office of the County Clerk, as public notice that the Counties will soon be selling the properties to the highest bidder, unless the taxes and all penalties and interest are fully paid.

pay the obligations of the IDA related to the Hudson Falls Trash Plant project. Schulz specifically requested that each member of the Board, "[C]onsider the evidence of fraudulent behavior...and then do the right thing--walk away from the [IDA] contracts." **There was no response to the February 20, 2003 Petition for Redress**. See Exhibit H annexed hereto.

60. On August 15, 2003, pursuant to the **First Amendment**, Schulz petitioned the Washington County Board of Supervisors (and by reference, the Warren County Board of Supervisors) for Redress of Grievances regarding the unconstitutional and fraudulent adoption of Chapter 682 of the New York laws of 1985. The Petition for Redress included a copy of ten published law review articles on the history, meaning, effect and significance of the Right to Petition the Government for Redress of Grievances, and a quote from an official Act, passed unanimously by the Continental Congress in 1774, affirming the Right of the People to retain their money until their grievances are Redressed. By the Petition for Redress, Schulz put the County Board on Notice that Schulz would be encouraging property owners to put their property tax money into a trust account, "there to remain until the Boards of Supervisors (of Washington and Warren Counties) either agree to stop using taxpayer funds to pay the debt of the Hudson Falls Trash plant or until they respond to the Petition for Redress of Grievances ...." **There was no response to the August 15, 2003 Petition for Redress**. See Exhibit I annexed hereto.

61. On November 16, 2003, pursuant to the **First Amendment**, Schulz Petitioned the Washington County Board of Supervisors for Redress of Grievances regarding the unconstitutional and fraudulent adoption of Chapter 682 of the New York laws of 1985. This Petition for Redress took the form of a guest essay directed at the Washington County Board of Supervisors under the headline "Washington County: No Answers? Then No Taxes." The Petition was published in the County's official newspaper of record, the Glens Falls Post Star. Schulz wrote, in part, "Early this year, every member of the Board of Supervisors was served with a Petition for Redress of Grievances alleging official corruption and fraud .... relating to approvals for the Hudson Falls trash plant. The petition ...

contained irrefutable evidence of fraudulent acts ... The remedy sought by the petition was a demand that the county representatives either refute the evidence or immediately stop using our property tax money to continue supporting this venture." **There was no response to the November 16, 2003 Petition for Redress**. See Exhibit J annexed hereto.

62. During November and December of 2003, Defendants were notified, through news articles published in the Post Star, that property owners were, in fact, Petitioning for Redress under the **First Amendment**, by agreeing to retain their tax money if the County officials did not properly respond to the Petitions for Redress. See Exhibit K annexed hereto.

63. In January, 2004, pursuant to the **First Amendment**, a Trust was created by the We the People Congress, Inc., a not-for-profit organization located in Washington County, for the benefit of owners of real property in Washington and Warren Counties and for the benefit of the Treasurers of Washington and Warren Counties. Plaintiffs placed in the trust the money due in January of 2004 as property taxes on 26 parcels of real property in Washington and Warren Counties. See Exhibit L annexed hereto.

64. On January 17, 2004, defendants were again notified, through a news article published in the Post Star, that property owners, pursuant to the **First Amendment,** were Petitioning for Redress by retaining their money until their Grievances were redressed. See Exhibit M annexed hereto.

65. On or about March 5, 2004, the Tax Collectors in each of Plaintiffs' towns notified Plaintiffs that Plaintiffs were being financially penalized for not paying their property taxes, and that after March 31, 2004, the County would become the tax collector and additional penalties will be added for nonpayment of the tax. Exhibit N is a sample of the letters received by Plaintiffs.

66. On or about April 5, 2004, Plaintiffs notified the Treasurers of Washington and Warren Counties that pursuant to the **First Amendment**, their tax money was timely placed in a Trust Account in the Glens Falls National Bank and Trust Company, there to remain until Defendants properly responded

to the Petitions for Redress or until the NYS Court of Appeals specifically declared that the adoption of Chapter 682 of the laws of 1985 was proper and legal. In these letters, Plaintiffs also notified the Treasurers that Plaintiffs were willing to immediately pay all amounts on each tax bill, except the amount earmarked for the County, and that the Treasurers should let the Plaintiffs know if such partial payment would be acceptable. See Exhibit O for examples of Plaintiffs' letters to the County Treasurers.

67. On or about April 14, 2004, the Warren County Treasurer notified Plaintiff Schulz that the law did not authorize him to accept partial payment. The Treasurer added, "Please note that continued non-payment of the taxes will cause interest and penalties to continue to accrue and at some point, could subject the parcels to a foreclosure action under the Real Property Tax Law of the State of New York." See Exhibit P annexed hereto.

68. On September 7, 2004, the Court of Appeals issued an Order declaring that the Court had decided not to hear the case regarding the constitutionality of Chapter 682 of the Laws of 1985. See Exhibit Q annexed hereto.

69. On or about September 8, 2004, plaintiffs received a notice from the Washington County Treasurer stating that a Notice of Pendency would soon be issued against the subject parcels and that "[c]ontinued failure to pay will eventually result in the loss of the property." See Exhibit R annexed hereto for examples of the letters from the Washington County Treasurer.

70. What these examples show is that Plaintiffs have respectfully, intelligently and rationally contacted their elected officials, literally begging for someone in government to provide official answers to pertinent questions relating to alleged violations of the Home Rule, local finances and due process clauses of the NY Constitution, including the legitimacy of the Chapter 682 of the NY Laws of 1985 and the legitimacy of the tax on real property to pay the debt of a public corporation, as enforced under the alleged authority of the defendant Boards of Supervisors and Treasurers, and as applied, *de facto*, to the owners of real property in Washington and Warren Counties.

71. Despite these repeated pleadings by the Plaintiffs for Defendants' Executive and Legislative branches to address the pertinent issues and questions posed by a number of citizens of the Counties, there has been total silence and a lack of acknowledgement from the Legislative and Executive branches of the County governments.

72. Instead of Redress under the **First Amendment**, there has been retaliation, accompanied by institutionalized contempt as well as a condescending and antagonistic attitude by our elected and appointed officials toward those Plaintiffs who have openly exercised their Article I and First Amendment Right to Petition for Redress of Grievances.

73. **As of this date, the Plaintiffs' grievances have not been redressed; the government is not listening to the People, the government is not properly responding to proper Petitions, no one in government is being held accountable for the egregious violations of Plaintiffs' fundamental Rights.**

74. Thus far, Plaintiffs have answered by saying, in effect, "We are answering those petitions through penalties and enforcement actions."

75. Plaintiffs have exercised their **First Amendment** Rights by petitioning defendants for a Redress of Grievances relating to violations of the N.Y. Constitution's home rule, local finances and due process clauses.

76. By communicating information, associating with like minds, expressing facts and opinions, reciting grievances, protesting abuses and praying for answers to specific questions, Plaintiffs have given expression essential to the end that government Defendants are, and must be held responsive and accountable to the Constitution and to the sovereignty of the People and that Redress and changes to which the People are entitled may be obtained by lawful and peaceful means.

77. The Defendants have repeatedly and steadfastly failed to properly respond to Plaintiffs' Petitions for Redress. Defendants

have demonstrated their intention to respond to said Petitions through "enforcement actions."

78. Knowing that a Right that is not enforceable is not a Right and wishing to peaceably enforce their individual, unalienable Rights, Plaintiffs have decided to give further expression to their Rights under the First Amendment of the U.S. Constitution to Speech, Assembly and Petition, by not paying their property taxes until Defendants properly respond to the Petition for Redress.

79. Plaintiffs believe such further expression is not an abuse of any of their First Amendment Rights, but an inextricable extension of their First Amendment Rights and any intervention by Defendants against such exercise of these First Amendment Rights represents a direct and substantive curtailment of Plaintiffs' Rights and is forbidden.

80. Defendants are retaliating against Plaintiffs by attempting to disqualify and discourage them from taking a public position on matters in which they are financially and politically interested, depriving Plaintiffs of their Right to Petition, to Peaceably Assemble and Associate, to Speak freely in the very instance in which those Rights are of the most importance to Plaintiffs.

81. Defendants' retaliation against Plaintiffs is without reasonable cause; it is not objective; there is no clear and present danger to the government Defendants that would justify their punishment of Plaintiffs for the direct exercise of popular sovereignty or performing an act of self-governance; the Petition clause was included in the First Amendment of the U.S. Constitution to ensure the growth and preservation of orderly, peaceful, and democratic self-governance; it is as much Plaintiffs' duty to question the acts and authority of government as it is the Defendants' duty to administer and obey their limited and delegated authority.

82. The very nature of our government, republican in form, limited by the First Amendment of the U.S. Constitution as it is, provides a guarantee of the Rights of Plaintiffs', as citizens, to

Assemble peaceably with other citizens for consultation with respect to public affairs, to Speak openly about the defects and abuses of governance and to effectively Petition the government Defendants for a Redress of Grievances.

83. The Right to Petition is among the most precious of the liberties guaranteed by the Bill of Rights; the value in the Right of Petition as an essential element in the direct exercise of popular sovereignty and self-government is beyond question.

JURISDICTION AND VENUE

84. Defendants have failed to address the Plaintiffs' Petitions for Redress of Grievances and subsequently retaliated against the Plaintiffs in violation of the First and Fourteenth Amendments to the United States Constitution (and Article I of the NY Constitution), and jurisdiction is proper.

85. Plaintiffs have been denied due process in violation of the 5th and 14th Amendments to the United States Constitution, and jurisdiction is proper.

86. Plaintiffs' civil rights have been violated under color of state law and jurisdiction is also invoked pursuant to 42 U.S.C. §1983.

87. The acts alleged by the Plaintiffs were perpetrated by the Executive Branch and Legislative Branch of the governments of Washington and Warren Counties.

FIRST CAUSE OF ACTION
DEFENDANTS HAVE FAILED TO VIEW PLAINTIFFS' PETITIONS FOR REDRESS THROUGH THE PRISM OF THE ORIGINAL MEANING, INTENT, HISTORY AND SIGNIFICANCE OF THE PETITION CLAUSES OF THE CONSTITUTIONS OF THE STATE OF NEW YORK AND THE UNITED STATES OF AMERICA

PLAINTIFFS HAVE A RIGHT TO PETITION THE GOVERNMENT FOR REDRESS OF GRIEVANCES, AND IF GOVERNMENT FAILS TO RESPOND, PLAINTIFFS

CAN RETAIN THEIR MONEY UNTIL THEIR GRIEVANCES ARE REDRESSED

88. Plaintiffs incorporate by reference the issues and facts stated in paragraphs 1 through 87, as if stated fully herein.

89. The value in the Right of Petition as an important aspect of self-government is beyond question. It is, after all, the only way for the individual and the small group to secure their unalienable Rights and directly hold the government accountable to the Constitution and Bill of Rights.

90. Plaintiffs have an unalienable Right to Petition the government for Redress of Grievances, a Right guaranteed by the State and U.S. Constitutions.

91. The First Amendment of the U.S. Constitution provides, in relevant part, that "Congress shall make no law . . . abridging . . . the right of the people . . . to petition the Government for a redress of grievances."

92. Article I of the NY Constitution provides, in relevant part, that "No law shall be passed abridging the Rights of the People peaceably...to petition the government, or any department thereof ...."

93. The Fifth Amendment of the U.S. Constitution provides, in relevant part, that "No person shall be ...deprived of life, liberty, or property, without due process of law ...."

94. The Supreme Court has recognized this Right to Petition as one of "the most precious of the liberties safeguarded by the Bill of Rights," *Mine Workers* v. *Illinois Bar Assn.*, 389 U.S. 217, 222 (1967).

95. The Fourteenth Amendment of the U.S. Constitution reads in relevant part, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law ...."

96. Article I of the NY Constitution reads in relevant part, "No member of this state shall be disenfranchised, or deprived of any of the Rights or privileges secured to any citizen thereof.

97. As the United States Supreme Court said in *United States* v. *Cruikshank*, 92 U.S. 542, 552: "The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances." The First Amendment of the Federal Constitution expressly guarantees that right against abridgment by Congress. The right is one that cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all civil and political institutions, -- principles which the Fourteenth Amendment embodies in the general terms of its due process clause. *Hebert* v. *Louisiana*, 272 U.S. 312, 316; *Powell* v. *Alabama*, 287 U.S. 45, 67.

98. Defendants' have an obligation to properly respond to Plaintiffs' proper Petitions. The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free Speech, free Press, free Assembly and free Petition in order to maintain an environment conducive and protective of free political discourse, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government and the freedom of the People.

99 The Framers envisioned the rights of Speech, Press, Assembly, and Petitioning as interrelated components of the public's exercise of its sovereign authority. As Representative James Madison observed during the House of Representatives' consideration of the First Amendment:

> "The right of freedom of speech is secured; the liberty of the press is expressly declared to be beyond the reach of this Government; the people may therefore publicly address their representatives,

> may privately advise them, or declare their sentiments by petition to the whole body; *in all these ways they may communicate their will.*" 1 Annals of Cong. 738 (1789) (emphasis added).

100. "It was not by accident or coincidence that the rights to freedom in speech and press were coupled in a single guaranty with the rights of the people peaceably to assemble and to petition for redress of grievances. All these, though not identical, are inseparable. They are cognate rights, . . . and therefore are united in the First Article's assurance." *Thomas* v. *Collins*, 323 U.S. 516, 530 (1945).

101. Although the courts have not previously addressed the precise issue presented here, the courts have recurrently treated the Right to Petition similarly to, and frequently as overlapping with, the First Amendment's other guarantees of free expression. See, *e. g., NAACP* v. *Claiborne Hardware Co.*, 458 U.S. 886, 909-912, 915 (1982); *Mine Workers* v. *Illinois Bar Assn.*, 389 U.S., at 221-222; *Adderley* v. *Florida*, 385 U.S. 39, 40-42 (1966); *Edwards* v. *South Carolina*, 372 U.S. 229, 234-235 (1963); *NAACP* v. *Button*, 371 U.S. 415, 429-431 (1963).

102. The Supreme Court made explicit that "the right to petition extends to all departments of the Government," and that "the right of access to the courts is . . . but one aspect of the right of petition." *California Motor Transport Co.* v. *Trucking Unlimited*, 404 U.S. 508, 510.

103. While genuine Petitioning is immune from retaliation, sham petitioning is not. Plaintiffs' Petitions are neither objectively baseless, nor subjectively motivated by an unlawful purpose, nor are they intended to interfere in any manner with the legitimate and lawful functioning of the government.

SECOND CAUSE OF ACTION

DEFENDANTS HAVE TAKEN RETALIATORY ACTIONS AGAINST THE PLAINTIFFS FOR PETITIONING FOR REDRESS

OF GRIEVANCES AND EXPRESSING THOSE GRIEVANCES PUBLICLY. SUCH RETALIATORY ACTION IS UNCONSTITUTIONAL

104. Plaintiffs incorporate by reference the issues and facts stated in paragraphs 1 through 103, as if stated fully herein.

105. A retaliatory action is one brought with a motive to *interfere* with the exercise of protected Rights.

106. A danger to public interest is required before the government can restrict Rights.

107. The Right to Petition the government requires stringent protection. "The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances." *United States v. Cruikshank*, 92 U.S. 542, 552 (1876).

108. Except in the most extreme circumstances citizens cannot be punished for exercising this right "without violating those fundamental principles of liberty and justice which lie at the base of all civil and political institutions," *De Jonge* v. *Oregon*, 299 U.S. 353, 364 (1937).

109. The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free Speech, free Press, free Assembly and free Petition in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government and the freedom of the People.

110. Although the term "petition" is not defined by the Constitutions, the United States Supreme Court long ago interpreted the "Petition Clause" to apply in a variety of

circumstances, noting the Right to Petition the representatives of the people in Congress; to Petition the Executive Branch, and the right of access to the courts. The Supreme Court has also determined that it is appropriate to give an alleged intrusion on First Amendment rights particular scrutiny where the government may be attempting to chill the exercise of First Amendment rights because the exercise of those rights would adversely affect the government's own selfish and conflicting interests.

111. More importantly, under our form of governance, the government cannot retaliate for the exercise of the Constitutional Right to Petition for Redress of Grievances, or to access the courts. Such retaliation is cognizable under Title 42, U.S.C. § 1983.

112. The right of access that underlies a charge of retaliation is lodged not only in the Petition Clause of the First Amendment, but also in the Due Process Clause of the Fifth and Fourteenth Amendments, and the Privileges and Immunities Clauses of Article IV and the 14th Amendment.

113. Through the instrumentalities of the Defendants, the Plaintiffs have suffered, and endure to this day, substantive damages, deprivations and abuse. These abuses and pains include, but are not limited to:

- Receipt of official correspondence threatening penalties and seizures.
- Public humiliation by publicly being listed as Delinquents.
- Plaintiffs face daily the "Hobson's choice" between either ignoring these substantive transgressions by their government and existing without their due Freedoms -- or facing the very real fear of subjecting themselves and their families, to the probable loss of their most fundamental Rights for daring to question their servant government regarding its authority and for daring to exercise their unalienable Rights as championed in our Founding documents.

114. Individuals who exercise their Right of free Speech, and which Speech the government alleges advocates lawbreaking, and which Speech the government chooses to refuse to answer or address, and which Speech incites no present harm, is protected. The retaliation by government agencies for exercising such Speech, particularly in the form of Petition, is clearly unconstitutional and morally reprehensible. The conduct of the Defendants, however beneficent in intent, is reminiscent of the actions taken by undemocratic regimes and rogue nations whose actions have been openly criticized and vilified by the United States as behaviors unbecoming a civilized People. As a matter of law, and Constitutional Right, the retaliatory actions against the Plaintiffs, in whole or individually, by the Defendants must be stopped.

115. The Plaintiffs have properly exercised their fundamental Right to Petition the government for Redress of Grievances regarding violations of the explicitly limited authorities delegated our government by the People through the Founding Documents. Instead of enjoying the first of the "Great Rights" – i.e., government based upon the consent of the People -- Plaintiffs have been directly and substantively retaliated against for acts of Petitioning their Government. The Defendant's primary choice of retaliatory weapons has been the enforcement of the Real Property Tax Law against Plaintiffs.

116. Plaintiffs desire nothing more for themselves and the Republic than to exercise the final clause of the First Amendment and the first clause of Section 9 of Article I of the NY Constitution and peacefully secure the Redress rightfully due them. As such, this Court should uphold and protect the Plaintiffs' Right to Petition as guaranteed by the First Amendment of the U.S. Constitution and the corollary right exercised by the Plaintiffs to peacefully *enforce* that Right by the withholding of monies they might otherwise relinquish to the Government.

117. Furthermore, because the Right of Petition is by its nature a direct exercise of the sovereignty of the People, and is of Constitutional necessity superior to the Government's narrowly limited authority to tax, the Court should Order and enjoin the

Defendants from any further or continuing acts of retaliation, in any form.

118. Defendant officials and agencies are violating Plaintiffs' Rights while operating under color of State law.

WHEREFORE, the Plaintiffs, respectfully request the Court enter an Order:

a. Granting declaratory relief to the Plaintiffs by constraining the defendants to meet their obligations under the law and relevant rules by entering into good faith exchanges with the Plaintiffs and to provide to the Plaintiffs documented and specific answers to the reasonable questions asked of them by the Plaintiffs and to properly and honestly address in their respective official capacities each of the issues raised by the Plaintiffs in their Petitions to representatives of the Washington and Warren County governments for Redress of Grievances, as is their Right under the First and Fourteenth Amendments; and

b. Granting a preliminary and temporary injunction against the Washington County Treasurer's Office, and the Warren County Treasurer's Office and any other agency of Washington and Warren County that arguably may act in this matter under color of law, from taking any retaliatory actions against the named Plaintiffs in this proceeding, including, publicly adding Plaintiffs to a list of delinquent taxpayers, the assessment of financial penalties and interest on and the confiscation of the subject parcels, whether such retaliation is for attempting to petition the County Government for Redress of Grievances, for assembling and associating with one another under the umbrella of the We The People Congress, for withholding monies from Defendants, for serving as Plaintiffs in this action or for the exercise of any other rights protected by the Constitutions of the State of New York and United States; and

c. Retaining jurisdiction of this action to ensure compliance with the Court's decisions; and

d. Expediting these proceedings where this matter might be set for trial; and

e. Granting any other, non-financial relief to the Plaintiffs that the Court may deem proper.

Dated: November 16, 2004

Respectfully Submitted,

ROBERT L. SCHULZ
Pro se
2458 Ridge Road
Queensbury, NY 12804
518.656.3578

Pro se
12 Jenkins Road,
Lake George, NY 12845.
518.668.4692

KEITH GILLIGAN
Pro se
12 Old Bend Road,
Fort Edward, NY 12828
518.798.3626

LOUIS NAVARRO
Pro se
1328 Patten Mills Road,
Fort Ann, NY 12827
518.745.8481

JUDITH PORCARO
Pro se
5391 State Route 40,
Argyle, NY 12809
518.638.8696

BRUCE TURNBULL
Pro se
1360 Patten Mills Road,
Fort Ann, NY 12827
518.792.2146

RAYMOND BASSETTE, SR.
Pro se
62 Middleton Rd.,
Granville, NY 12832.
518.642.1825

Appendix H

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ROBERT L. SCHULZ, et al.,

Plaintiff,

-versus- 04-CV-1375

(ORDER TO SHOW CAUSE)

WASHINGTON COUNT BOARD OF SUPERVISORS, et al.,

Defendant.

TRANSCRIPT OF PROCEEDINGS held in and for the United States District Court, Northern District of New York, at the James T. Foley United States Courthouse, 445 Broadway, Albany, New York, 12207, on WEDNESDAY, DECEMBER 8, 2004, before the HON. LAWRENCE E. KAHN, United States District Court Judge.

APPEARANCES:

FOR THE PLAINTIFF:

ROBERT L. SCHULZ, PRO SE

FOR THE DEFENDANT WASHINGTON COUNTY:

BOISE, SCHILLER LAW FIRM
BY: GEORGE F. CARPINELLO, ESQ.

- and –

BY: THOMAS HIGGS

FOR THE DEFENDANT WARREN COUNTY:

SUGARMAN, WALLACE LAW FIRM

BY: TIMOTHY J. PERRY, ESQ. ...

"THE COURT: You are saying even if 682 is unconstitutional, that doesn't make any difference --

MR. CARPINELLO: Exactly.

THE COURT: -- to either side.

MR. CARPINELLO: ...The question is not whether he had an adequate remedy to challenge 682, it's whether he had an adequate remedy to challenge the collection of taxes...

THE COURT: Did they dismiss it on the merits?...

MR. CARPINELLO: They did not address -- he's correct, they did not expressly address the 682 claim. That may be right. That may be wrong. Maybe the Court of Appeals should have taken the case. Maybe if he didn't raise 85 different arguments in his case, maybe the Court would have noticed it. But that's history...

THE COURT: But they didn't address it.

MR. CARPINELLO: ... Right. First of all, the question is not whether he had an adequate remedy to test 682, that's not this case...."

Office of the County Treasurer
383 Broadway
Fort Edward, NY 12828
(518)746-2220 Fax: 746-2234

March 31, 2006
Certified Mail

SCHULZ ROBERT
2458 RIDGE RD
QUEENSBURY NY 12804

Town Code: 532889: Fort Ann
Map #: 91.-1-30
Location: 2458 STATE ROUTE 9L
Assessment: $593,800
Index #: 25

Dear Washington County Taxpayer:

Ownership of the property described above was conveyed to Washington County for non-redemption of the 2004 Real Taxes by 2004 tax sale ded filed in the Washington County Clerk's Office on March 30, 2006. Per Board of Supervisors' Resolution No. 101 dated March 19, 1999, paragraph 2, sub-divisions A, B. C, D. E. Resolution No. 146 dated April 16, 2004 and Resolution No. 120 dated April 15, 2005, you have the opportunity to repurchase this property from the County no later than eight days before the County's schedule auction day of June 17, 2006. The repurchase amount includes all taxes levied and outstanding through January 2005, plus recording and filing fees the auctioneer service charge. Please note that the repurchase amount does NOT INCLUDE THE 2006 REAL PROPERTY TAXES.

Enclosed please find Repurchase Agreement, RP5217 "Real Property Transfer Report" and TP584 "Combined Real Estate Transfer Tax Return". If it is your decision to exercise the repurchase option, please review the agreement to make certain the buyer's name and address are as they should appear on the deed. Once you have done this, please sign the agreement in the buyer's section and the above-mentioned documents by the red X. Also, have an uninterested party witness the signatures(s) on the Repurchase Agreement. Once the documents are signed and

the agreement is witnessed, please return to this office along with a certified check, made payable to the Washington County Treasurer, or cash, in the amount of $12,371.00, representing payment as follows:

Repurchase Amount:	$ 12,150.00
Recording & Filing Fees:	$ 171.00
Auctioneer Service Charge:	$ 50.00
Total:	$ 12,371.00

Payment must be received in this office by the close of business (4:30 PM) on June 9, 2006. POSTMARKS WILL NOT BE ACCEPTED! This is your last opportunity to reclaim your rights to this property.

For your information, I am enclosing a copy of the above-mentioned resolutions. Please review so that you have a complete understanding of the procedures for repurchase.

The recorded deed will be mailed to you at the address on the contract.

If you have any questions, please contact this office Monday through Friday, 8:30 A.M. to 4:30 P.M. at (518) 746-2220.

Very Truly Yours,
Phyllis Cooper
Treasurer, County of Washington